

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922. 1922/

No. 5 ~~106~~ 14

**WILLIAM T. PRICE AND ORA PRICE, PLAINTIFFS IN
ERROR,**

vs.

MAGNOLIA PETROLEUM COMPANY ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

FILED AUGUST 15, 1922.

(29,096)

(29,096)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 546.

WILLIAM T. PRICE AND ORA PRICE, PLAINTIFFS IN
ERROR,

vs.

MAGNOLIA PETROLEUM COMPANY *ET AL.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

INDEX.

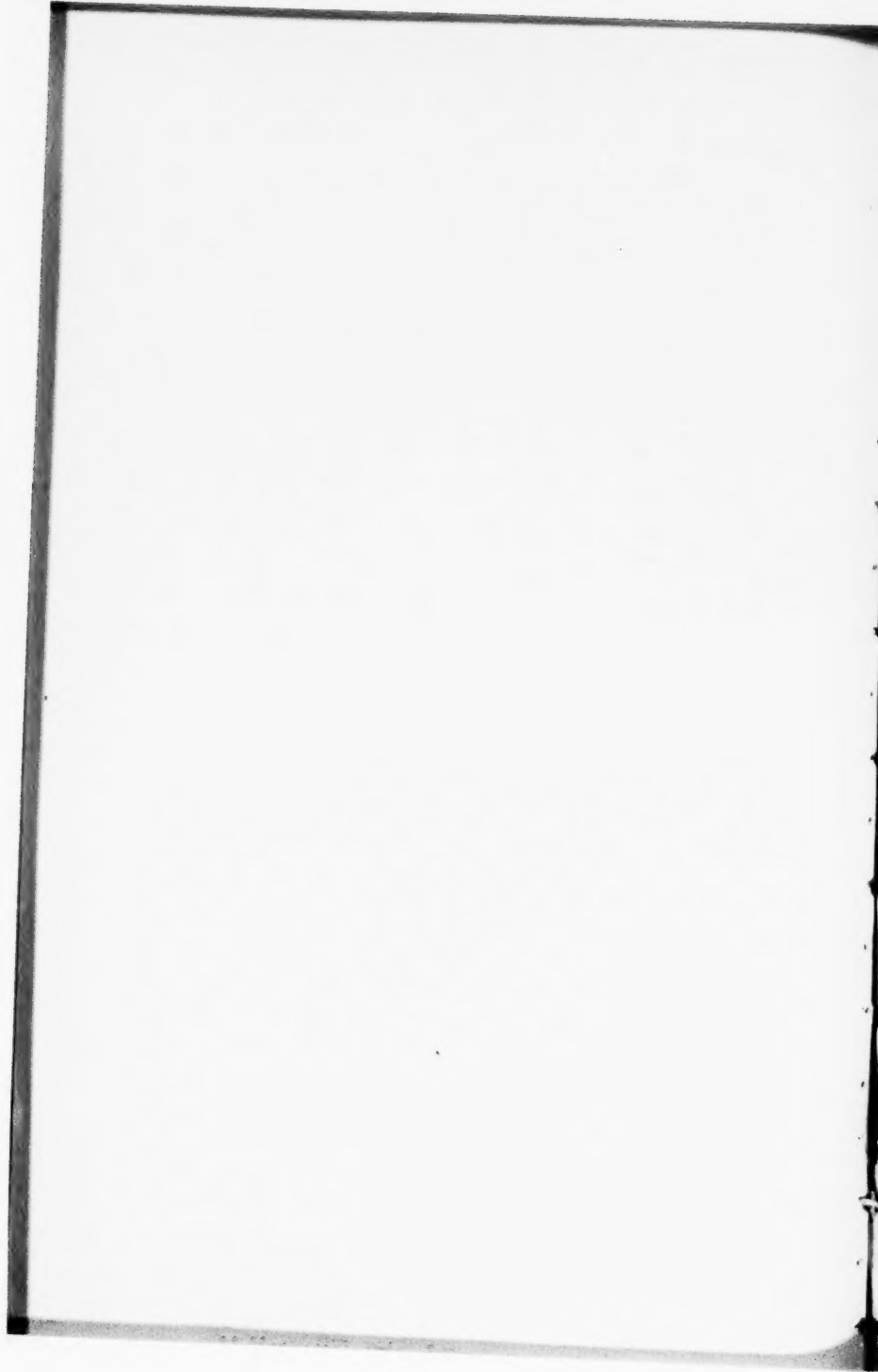
	Page.
Proceedings in supreme court of Oklahoma.....	i
Return to writ of error.....	i
Citation and service.....	i
Petition for writ of error.....	iii
Order allowing writ of error.....	viii
Writ of error.....	ix
Præcipe for transcript.....	xi
Bond on writ of error.....	xiii
Petition in error.....	1
Case-made in district court of Stephens County.....	3
Petition for injunction.....	4
Amended petition.....	8
Exhibit A—Lease, commissioners of land office of Oklahoma to Magnolia Petroleum Co. <i>et al.</i> , January 4, 1919... ..	14
B—Lease, commissioners of land office of Oklahoma to William T. Price, January 2, 1913.....	20
C—Extension of lease of Wm. T. Price.....	24
Answer to amended petition.....	26

	Page.
Exhibit A—Renewal of lease, William Grimes <i>et al.</i> to William T. Click, June 8, 1902.....	41
B—Lease, Thompson B. Ferguson <i>et al.</i> to William T. Click, January 1, 1905.....	45
C—Extension of lease of William T. Click, July 18, 1908	48
D—Same, December 31, 1908.....	49
E—Extension of lease of L. B. De Arman, May 12, 1909	50
F—Relinquishment of L. B. De Arman, October 15, 1909	51
Notice of petition to intervene.....	53
Petition of intervention of commissioners of land office.....	54
Answer to petition.....	59
Minute entries.....	61
Reply of plaintiff.....	61
Reply of intervenor.....	62
Transcript of stenographer.....	63
Testimony of Ralph Talley.....	67
Testimony of Louis Campbell.....	78
Exhibit C—Minutes of meeting of commissioners of land office, August 26, 1915.....	80
4—Same, October 6, 1915.....	81
5—Same, January 26, 1915.....	83
6—Same, January 3, 1918.....	85
7—Same, March 12, 1918.....	87
8—Same, November 20, 1918.....	88
9—Same, December 31, 1918.....	90
10—Same, January 4, 1919.....	91
Notations as to Exhibits 11 and 12—Not set out.....	93
Testimony of O. B. Surber.....	93
Testimony of W. T. Price.....	95
Exhibit B—Appraisement of school lands.....	98
C—Minutes of meeting of commissioners of land office, March 25, 1909.....	101
D—Appraisement of school lands in Stephens County	104
E—Letter of A. S. J. Shaw <i>in re</i> right preference lease, application No. 1497.....	112
Paragraphs 3, 4, 5, 6, 7, 12, 8, 9, 14 to 19, inclusive, and 21 of stipulation of facts.....	114
Exhibit H—Renewal of lease of William T. Click, January 8, 1902.....	121
J—Lease of Wm. T. Price, January 2, 1913.....	125
L—Letter of W. M. Stone, March 19, 1891, and let- ter of Geo. Chandler, March 20, 1891.....	129
Testimony of Scott Stine.....	136
Testimony of Mrs. Ora Price.....	147
Exhibit O—Letter, W. T. Price to Ed. Cassidy, February 19, 1910.....	148
Letter, Ed. O. Cassidy to W. T. Price, February 21, 1910..	150

INDEX.

iii

	Page.
Testimony of W. T. Price (recalled).....	150
Journal entry of judgment.....	152
Motion for new trial by plaintiff.....	160
Motion for new trial by intervenor.....	161
Order overruling motions.....	162
Notice and service of transcript.....	163
Stenographer's certificate.....	164
Order settling case-made.....	164
Notice of submission of case-made and service.....	165
Clerk's certificate.....	166
Order setting cause for hearing.....	166
Order granting supersedeas and fixing duties of receiver.....	167
Argument and submission.....	168
Order granting leave to drill offset wells.....	168
Judgment	169
Opinion, Harrison, C. J.....	170
Petition for rehearing.....	187
Order denying petition.....	203
Order staying mandate.....	203
Assignment of errors.....	204
Clerk's certificate.....	214



Return to Writ.

In obedience to the commands of the within Writ, I transmit herewith to the Supreme Court of the United States, a duly certified transcript of the record and proceedings in the within entitled case as called for and designated by the praecipe filed in this Court in said cause, with all things concerning the same, including the opinion of the Court, rendered, filed and recorded.

In witness whereof, I hereunto subscribe my name and affix the seal of said Supreme Court of Oklahoma, in the City of Oklahoma City, Oklahoma, this 2nd day of August, 1922.

WILLIAM M. FRANKLIN,
Clerk of the Supreme Court of Oklahoma.

By JESSIE PARDOE, Deputy.

[Seal of the Supreme Court]

[Stamped]

Filed in Supreme Court of Oklahoma, August 2nd, 1922.

WILLIAM M. FRANKLIN, Clerk.
By JESSIE PARDOE, Deputy.

In the Supreme Court of the United States.

(Filed in Supreme Court of Oklahoma July 22, 1922,
William M. Franklin, Clerk.)

WILLIAM T. PRICE and ORA PRICE, his wife, Plaintiffs in Error,

vs.

MAGNOLIA PETROLEUM COMPANY, a joint stock association,
John Sealy, E. R. Brown, R. Waverly Smith, E. E.
Plumly and W. C. Proctor, Trustees; STATE OF OKLAHOMA,
ex rel. Commissioners of the Land Office of the State of
Oklahoma, and *ex rel.* S. P. Freeling, Attorney General
of the State of Oklahoma, Defendants in Error.

Citation.

United States of America, to the Magnolia Petroleum Com-

pany, a joint stock association, John Sealy, E. R. Brown, R. Waverly Smith, E. E. Plumly, and W. C. Proctor, Trustees; and the State of Oklahoma, *ex rel.* Commissioners of the Land Office of the State of Oklahoma, and *ex rel.* S. P. Freeling, Attorney General of the State of Oklahoma, defendants in error, Greetings:

You, and each of you, are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, in the District of Columbia, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Oklahoma, wherein William T. Price and Ora Price are plaintiffs in error, and you, the Magnolia Petroleum Company, a joint stock association, John Sealy, E. R. Brown, R. Waverly Smith, E. E. Plumly, and W. C. Proctor, Trustees; and the State of Oklahoma, *ex rel.* Commissioners of the Land Office of the State of Oklahoma, and *ex rel.* S. P. Freeling, Attorney General of the State of Oklahoma, are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error (appellants) as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States, this the 21st day of July, in the year of our Lord, 1922.

WILLIAM H. TAFT,
~~Acting~~ Chief Justice of the Supreme
Court of the United States.

By JOHN H. PITCHFORD,
Acting Chief Justice of the Supreme Court of Oklahoma.

Attest:

WM. M. FRANKLIN, Clerk, Supreme Court of Oklahoma.

By JESSIE PARDOE, Deputy Clerk.

[SEAL]

Copy of the above and foregoing citation received, and service acknowledged on this 21st day of July, A. D. 1922, at the office of the Attorney General of the State of Oklahoma, and each of said defendants in error (appellees) hereby enters

its and his general appearance in said cause in the Supreme Court of the United States.

J. B. A. ROBERTSON, *Governor,
State of Oklahoma, ex rel. Commissioners
of the Land Office of the State of Okla-
homa, and ex rel. S. P. Freeling, Attorney
General of the State of Oklahoma.*

GEO. F. SHORT,
Attorney General for Oklahoma.

By C. W. KING,
Assistant Attorney General.

By GEO. E. MERRITT,
*Attorney for Commissioners of the Land
Office of the State of Oklahoma.*

Copy of the above and foregoing citation received, and service acknowledged on this 22nd day of July, A. D. 1922, at the office of the Magnolia Petroleum Company, and each of said defendants in error (appellees) hereby enters its and his general appearance in said cause in the Supreme Court of the United States.

Magnolia Petroleum Company, a joint stock association, John Sealy, E. R. Brown, R. Waverly Smith, E. E. Plumly, and W. C. Proctor, Trustees.

B. B. BLAKENEY & HUBERT AMBRISTER,
Its and Their Attorneys of Record.

(Filed in Supreme Court of Oklahoma, July 21, 1922,
William M. Franklin, Clerk.)

The Supreme Court of the United States.

In the Supreme Court of the State of Oklahoma.

WILLIAM T. PRICE and ORA PRICE, his wife, Plaintiffs in Error,
vs.

MAGNOLIA PETROLEUM COMPANY, a joint stock association,

John Sealy, E. R. Brown, R. Waverly Smith, E. E. Plumly and W. C. Proctor, Trustees; STATE OF OKLAHOMA, *ex rel.* Commissioners of the Land Office of the State of Oklahoma, and *ex rel.* S. P. Freeling, Attorney General of the State of Oklahoma, Defendants in Error.

Petition for Writ of Error.

To the Honorable William H. Taft, ^{chief} Justice of the Supreme Court of the United States, and the Associate Justices in said Court:

Now come William T. Price and Ora Price, and would show unto this Honorable Court that in the record and proceedings and rendition of the decree of the above cause by the Supreme Court of the State of Oklahoma, it being the highest court in said State in which a decision could be had in a suit between the Magnolia Petroleum Company, a joint stock association, John Sealy, E. R. Brown, R. Waverly Smith, E. E. Plumly, and W. C. Proctor, Trustees; and the State of Oklahoma, *ex rel.* Commissioners of the Land Office, and *ex rel.* S. P. Freeling, Attorney General of the State of Oklahoma, were plaintiffs in error, and William T. Price and Ora Price, were defendants in error, manifest error has occurred, greatly to defendants' damage, whereby plaintiffs in error feel aggrieved.

That in the record and proceedings, it will appear that there was drawn in question the validity of the Statutes of the State of Oklahoma, passed and approved the 26th day of May, 1908, appearing in the Session Laws of the State of Oklahoma of 1907-08, Chapter 49, Article IV, page 490.

That in the above entitled matter, on the 21st day of April, 1922, judgment was rendered against your petitioners by the Supreme Court of the State of Oklahoma, and application for re-hearing thereof was denied by the said court on the 2nd day of May, 1922; that being the highest court of law or equity in the said State of Oklahoma, in which a decision could be had on the said question, and in the said case.

That in said judgment and final order, and in the proceedings in said cause, certain errors were committed to the preju-

dice of petitioners, all of which will, more in detail, appear from the Assignment of Errors which is filed with this petition.

That in the above entitled matter in said Court, it was adjudged that the provisions of the Statute of the State of Oklahoma of 1907-08, Chapter 49, Article IV, which made it lawful for the Commissioners of the Land Office of the State of Oklahoma, when any tract of the "lands granted to the State under the Act of Congress known as the Enabling Act, is, by the Commissioners of the Land Office of the State, known to contain oil or gas, or where such lands are, by such Commissioners, deemed valuable for oil and gas purposes, that such Commissioners shall enter of record in their office their finding declaring such oil or gas character exists, and further declaring that the oil and gas deposits are segregated from the surface use and interest therein, and such segregation of such deposits shall conclusively withhold the same from sale, lease or other alienation, except as provided in this act," to lease the oil and gas interest in said land so segregated "for oil and gas purposes to the same extent and in the same manner as private owner in fee could," was not in conflict with the terms and provisions of the Act of Congress of June 16, 1906 (Enabling Act), and not in conflict with the terms and provisions of, and repugnant to, the Constitution of the United States, Section 1, Article 10, and the XIV Amendment thereto, as to petitioners, who then and there held a tract of said land and possessed and claimed said tract of land by having initiated their rights as lessees thereof under the said Enabling Act and who continuously held and claimed a preference right to purchase said land under the said Enabling Act, and who hold and claim to have acquired and purchased the said land under the Enabling Act and by compliance with the Statute of Oklahoma of 1909, Chapter 28, Article II; in that the provisions of said Statute did not impair petitioners' right of contract as to said land, and did not deprive petitioners of liberty and property without due process of law, and did not deny to petitioners so situated, the equal protection of the law.

That in the above entitled matter in said Court, it was adjudged that the authority of the Commissioners of the

Land Office of the State of Oklahoma, exercised under said Statute, in executing an oil and gas lease, or grant, to the Magnolia Petroleum Company, on January 4, 1919, to the land in question, was not in conflict with the terms and provisions of the Act of Congress of June 16, 1906 (Enabling Act) and not in conflict with the terms and provisions of, and repugnant to the Constitution of the United States, Section I, Article 10, and the XIV Amendment thereto, as to petitioners who then and there held said tract of land and possessed and claimed said tract of land by having initiated their rights as lessees of land under the said Act of Congress of June 16, 1906 (Enabling Act), and who continuously held and claimed a preference right to purchase said land, and all of it, under the Enabling Act, and who hold and claim to have acquired and purchased the said land under the Enabling Act and by compliance with the Statute of Oklahoma of 1909, Chapter 28, Article II, in that the authority so exercised as applied to petitioners in said land, did not impair petitioners' right of contract as to said land, and did not deprive petitioners of liberty and property without due process of law, and did not deny to petitioners so situated, the equal protection of the law.

That in the above entitled matter, in said court, it was adjudged: That the authority of the Magnolia Petroleum Company in entering upon and exploring said land, and taking therefrom oil, gas and water, under such oil and gas lease, so executed by the Commissioners of the Land Office of the State of Oklahoma, to the Magnolia Petroleum Company, on January 4, 1919, was not in conflict with the terms and provisions of the Act of Congress of June 16, 1906 (Enabling Act), and not in conflict with the terms and provisions of, and repugnant to the Constitution of the United States, Section 1, Article 10, and the XIV Amendment thereto, as to petitioners, who then and there held said tract of land and then and there claimed said tract of land by having initiated their rights as lessees thereof under the said Enabling Act and who continuously held and claimed the preference right of purchase of said land, and all of it, under the Enabling Act, and under their claim to have acquired and purchased said land under the Enabling Act and by compliance with the

Statute of Oklahoma of 1909, Chapter 28, Article III, in that the exercise of such authority by the Magnolia Petroleum Company did not impair petitioners' right of contract as to said land, and did not deprive petitioners of liberty and property without due process of law, and did not deny to petitioners so situated, the equal protection of the law.

That in the above entitled matter, it was adjudged by said Court that the Act of Congress of June 16, 1906 (Enabling Act) was invalid, and that the authority exercised thereunder by the petitioners, was invalid, in that the Court adjudged that the petitioners had no preference right to purchase the said land in its entirety that was not subject to the power of the State, or the Commissioners of the Land Office of the State of Oklahoma, to annul, limit, impair or render ineffective; as more fully appears by Assignment of Errors filed herein.

Wherefore: Your petitioners pray for the allowance of Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Oklahoma, and the judges thereof, to the end that the record in said matter may be removed to the Supreme Court of the United States, and the error complained of by your petitioners may be examined, corrected and said judgment reversed, and the judgment of the District Court in said cause be affirmed, and for such further proceedings in said cause as may be determined by this Honorable Court, to the end that justice may be done in the premises; and your petitioners will ever pray.

ERNEST E. BLAKE,
JOHN F. SHARP,
C. B. STUART,
M. K. CRUCE,
A. T. BOYS,
W. C. STEVENS,

Attorneys for Plaintiffs in Error.

Assignments of Error.

(See page 204.)

Supreme Court of the United States.

In the Supreme Court of the State of Oklahoma.

WILLIAM T. PRICE and ORA PRICE, Plaintiffs in Error,

vs.

MAGNOLIA PETROLEUM COMPANY, a joint stock association, John Sealy, E. R. Brown, R. Waverly Smith, E. E. Plumly and W. C. Proctor, Trustees; STATE OF OKLAHOMA, *ex rel.* Commissioners of the Land Office of the State of Oklahoma, and *ex rel.* S. P. Freeling, Attorney General of the State of Oklahoma, Defendants in Error.

Order Allowing Writ of Error to the Supreme Court of the United States of America.

The above entitled matter coming on to be heard, upon the petition of the defendants in error herein for a writ of error to the Supreme Court of the United States, upon examination of said petition and the records in said matter and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the question presented by the record in said matter,

It is ordered:

That writ of error be and is hereby allowed from this Court to the Supreme Court of the United States to review the judgment and order complained of herein and rendered on the 21st day of March, 1922, and rehearing of which was denied by the Supreme Court of the State of Oklahoma on the 2nd day of May, 1922.

And it is further ordered that plaintiffs in error give bond herein in the sum of One Thousand Dollars to be approved by the Chief Justice of the Supreme Court of Oklahoma.

Ordered, adjudged and decreed this 21st day of July, 1922.

JOHN H. PITCHFORD,

*Acting Chief Justice of the Supreme
Court of Oklahoma.*

[SEAL]

Attest: WM. M. FRANKLIN,

Clerk Supreme Court of Oklahoma.

By JESSIE PARDOE, *Deputy Clerk.*

(Filed in Supreme Court of Oklahoma July 22, 1922,
William M. Franklin, Clerk.)

In the Supreme Court of the United States

WILLIAM T. PRICE and ORA PRICE, his wife, Plaintiffs in Error,

vs.

MAGNOLIA PETROLEUM COMPANY, a joint stock association,
John Sealy, E. R. Brown, R. Waverly Smith, E. E.
Plumly and W. C. Proctor, Trustees; STATE OF OKLAHOMA,
ex rel. Commissioners of the Land Office of the State of
Oklahoma, and *ex rel.* S. P. Freeling, Attorney General
of the State of Oklahoma, Defendants in Error.

Writ of Error.

United States of America:

The President of the United States of America to the
Honorable, the Judges of the Supreme Court of the State of
Oklahoma, greetings:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said Supreme Court on appeal from the District Court of Stephens County, State of Oklahoma, before you, or some of you, being the highest Court of law or equity of said State in which a decision could be had in the said suit between the Magnolia Petroleum Company, a joint stock association; John Seely, E. R. Brown, R. Waverly Smith, E. E. Plumly, and W. C. Proctor, Trustees; State of Oklahoma *ex rel.* Commissioners of the Land Office of the State of Oklahoma, and *ex rel.* S. P. Freeling, Attorney General of the State of Oklahoma, plaintiffs in error, and William T. Price and Ora Price, his wife, defendants in error, wherein was drawn in question the validity of the Statute of the United States of America, to wit, the Act of June 16, 1906 (Enabling Act of the State of Oklahoma), 30 Stat. L. 507, and the decision was against its validity; and wherein was drawn in question the validity of an authority exercised under the said Statute of the United States of June 16, 1906, and the decision was against its validity. And wherein was drawn in question the validity of the Statute of the State of Oklahoma, to wit, the Act of May 26, 1908, Session Laws 1907-

08, page 490, and an authority exercised under said State, on the ground of their being repugnant to the Constitution of the United States, and the said Act of Congress of the United States, of June 16, 1906, 30 Stat. L. 507; and the decision was in favor of the validity of the Statute of the State of Oklahoma, and of the authority exercised under the State of Oklahoma.

And, wherein was drawn in question the validity of the construction of the clause in the Constitution of the United States, to wit, Section 10, Article I, and the Amendments numbered V and XIV to the said Constitution, and the decision was against the construction claimed for said clause of said Constitution, and said Amendments thereto.

And there being manifest error in said decision, to the great damage of said William T. Price and Ora Price, defendants in error in said cause, as is said and appears by their complaint and assignment of errors, and being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States this 21 day of July, in the year of our Lord, 1922.

ARNOLD C. DOLDE,

*Clerk of the District Court of the United States
for the Western District of Oklahoma.*

[SEAL]

Allowed:

JOHN H. PITCHFORD,

*Acting Chief Justice of the Supreme Court
of the State of Oklahoma.*

Attest: WM. M. FRANKLIN,
*Clerk of the Supreme Court of
the State of Oklahoma.*
By JESSIE PARDOE, *Deputy Clerk.*

[SEAL]

In the Supreme Court of the State of Oklahoma.

No. 12,243.

MAGNOLIA PETROLEUM COMPANY, a joint stock association,
John Sealy, E. R. Brown, R. Waverly Smith, E. E.
Plumly and W. C. Proctor, Trustees; STATE OF OKLAHOMA,
ex rel. Commissioners of the Land Office of the State of
Oklahoma, and *ex rel.* S. P. Freeling, Attorney General
of the State of Oklahoma, Plaintiffs in Error.

vs.

WILLIAM T. PRICE and ORA PRICE, Defendants in Error.

Præcipe for Transcript of the Record.

Come now the defendants in error, William T. Price and Ora Price, by their counsel, and direct the Clerk to make a transcript of the record and proceedings had in said cause, showing the following:

- (1) The petition in error, complete.
- (2) The petition for injunction, complete.
- (3) The amended petition, complete.
- (4) The answer to amended petition, complete.
- (5) The application of State of Oklahoma to intervene, complete.
- (6) The petition of intervention, complete.
- (7) The answer to petition of intervention, complete.
- (8) Reply of plaintiff to defendants' answer, complete.
- (9) The reply of intervener, the State of Oklahoma, to defendants' answer to its petition in intervention, complete.
- (10) The recital in the record as to the appearances in the case and the application and leave of the Court to file the pleadings of the respective parties.
- (11) The evidence in the case, to consist of each and all of the paragraphs of the Stipulation of Facts offered in evi-

dence by each party, and the rulings of the Court thereon, excluding the duplication of exhibits; all oral evidence and record evidence in the case, excluding the duplications of exhibits offered. Omitting the Articles of Trust Agreement of the Magnolia Petroleum Company. Omitting the Exhibits "F," "F-1," "F-2," "F-3," and "F-4," including only the letter of the Secretary attached thereto. Omitting defendants' exhibit "L." Omitting depositions of Frank Carter, Robert May and C. S. Potter. Omit defendants' Exhibit "M." Omit depositions of W. A. Durant and R. H. Wilson.

(12) Journal Entry of Judgment.

(13) Motion for New Trial, and Journal Entry overruling the same, and the Journal Entries overruling the Motion for New Trial and Extending the time for Making and Serving Case-made.

(14) All the proceedings in the Supreme Court, including the orders and judgment and opinion of the Court; the Motion for Re-Hearing and Order of the Court thereon. Omitting the orders of the Court concerning the drilling of wells during litigation and the custody of the property pending litigation.

(15) Assignment of Errors filed.

Dated this 8 day of July, 1922.

BLAKE & BOYS,
STUART, SHARP & CRUCE,
STEVENS & RICHARDSON,
Attorneys for Defendants in Error,
William T. Price and Ora Price.

(Filed in Supreme Court of Oklahoma, Jul 8, 1922. William M. Franklin, Clerk.)

We, the undersigned attorneys for the plaintiff in error, the Magnolia Petroleum Company, a Trust, do hereby acknowledge service of the above and foregoing praecipe on us this the 8th day of July, 1922.

B. B. BLAKNEY.
HUBERT AMBRISTER.

We, the undersigned attorneys for the State of Oklahoma, *ex rel.* Commissioners of the Land Office of the State of Okla-

homa, and *ex rel.* S. P. Freeling, Attorney General of the State of Oklahoma, do hereby acknowledge service of the above and foregoing praecipe on this the 8th day of July, 1922.

GEO. F. SHORT,
Attorney General.

C. W. KING,
Asst. Attorney General.

GEO. E. MERRITT,
*Attorney for Commissioners
of the Land Office.*

In the Supreme Court of the United States.

In the Supreme Court of the State of Oklahoma.

WILLIAM T. PRICE and ORA PRICE, his wife, Plaintiffs in Error,

vs.

MAGNOLIA PETROLEUM COMPANY, a joint stock association, John Sealy, E. R. Brown, R. Waverly Smith, E. E. Plumly and W. C. Proctor, Trustees; STATE OF OKLAHOMA, *ex rel.* Commissioners of the Land Office of the State of Oklahoma, and *ex rel.* S. P. Freeling, Attorney General of the State of Oklahoma, Defendants in Error.

Bond.

Know All Men By These Presents:

That we, William T. Price and Ora Price, as principals, and B. C. Smith, H. D. Miller, G. N. Jeffries, R. W. Bell, P. Stein, as suretis, are held and firmly bound unto the Magnolia Petroleum Company, and the State of Oklahoma, defendants in error, in the sum of one thousand and no/100 dollars, to be paid to the said obligees, their successors, representatives and assigns; to the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Dated this 25th day of July, A. D. 1922.

That, whereas, the above named plaintiffs in error, William

T. Price and Ora Price, have applied for a writ of error to the Supreme Court of the United States to reverse the action taken by the Supreme Court of the State of Oklahoma;

Now, therefore, the condition of this obligation is such that if the above named plaintiffs in error shall prosecute their above named writ of error to effect and shall answer all costs and damages, if they fail to make good their plea, then this obligation shall be void. Otherwise to remain in full force and effect.

I wrote the name of William T.

Price hereto at his request
and in his presence.

E. H. BOND

Additional witness to William
T. Price signature.

E. E. MORRIS

Signed, sealed and delivered
in the presence of

J. F. SHARP.

CAROLAN L. LAMBLEY.

His

WILLIAM X T. PRICE,

Mark

ORA PRICE,

Principals

B. C. SMITH,

H. D. MILLER,

G. N. JEFFRIES,

R. W. BELL,

P. STEIN,

STATE OF OKLAHOMA,

Stephens County, ss:

On this 26th day of July, 1922, before me personally appeared Ora Price, to me known to be the person who executed the above and foregoing Bond, and acknowledged that she executed the same as her free act and deed.

GLADYS W. ROBERSON,

Notary Public.

[SEAL]

My Commission expires Jan. 24, 1924.

STATE OF OKLAHOMA,

Oklahoma County, ss:

On this 25th day of July, 1922, before me personally appeared B. C. Smith, H. D. Miller, G. N. Jeffries, R. W. Bell,

P. Stein, to me known to be the persons who executed the above and foregoing Bond, and acknowledged that they executed the same as their free act and deed.

CAROLAN L. LAMBLEY,
Notary Public.

[SEAL]

My Commission expires December 15, 1924.

STATE OF OKLAHOMA,
Oklahoma County, ss:

B. C. SMITH, being by me duly sworn, states: That he is a resident and householder of Caddo County, Oklahoma, and that he is worth the sum of one thousand (\$1,000.00) dollars over and above his just debts and legal liabilities and property exempt from execution.

H. D. MILLER, being by me duly sworn, states: That he is a resident and householder of Comanche County, Oklahoma, and that he is worth the sum of one thousand (\$1,000.00) dollars over and above his just debts and legal liabilities and property exempt from execution.

B. C. SMITH,
H. D. MILLER.

Subscribed and sworn to before me this 25th day of July, A. D. 1922.

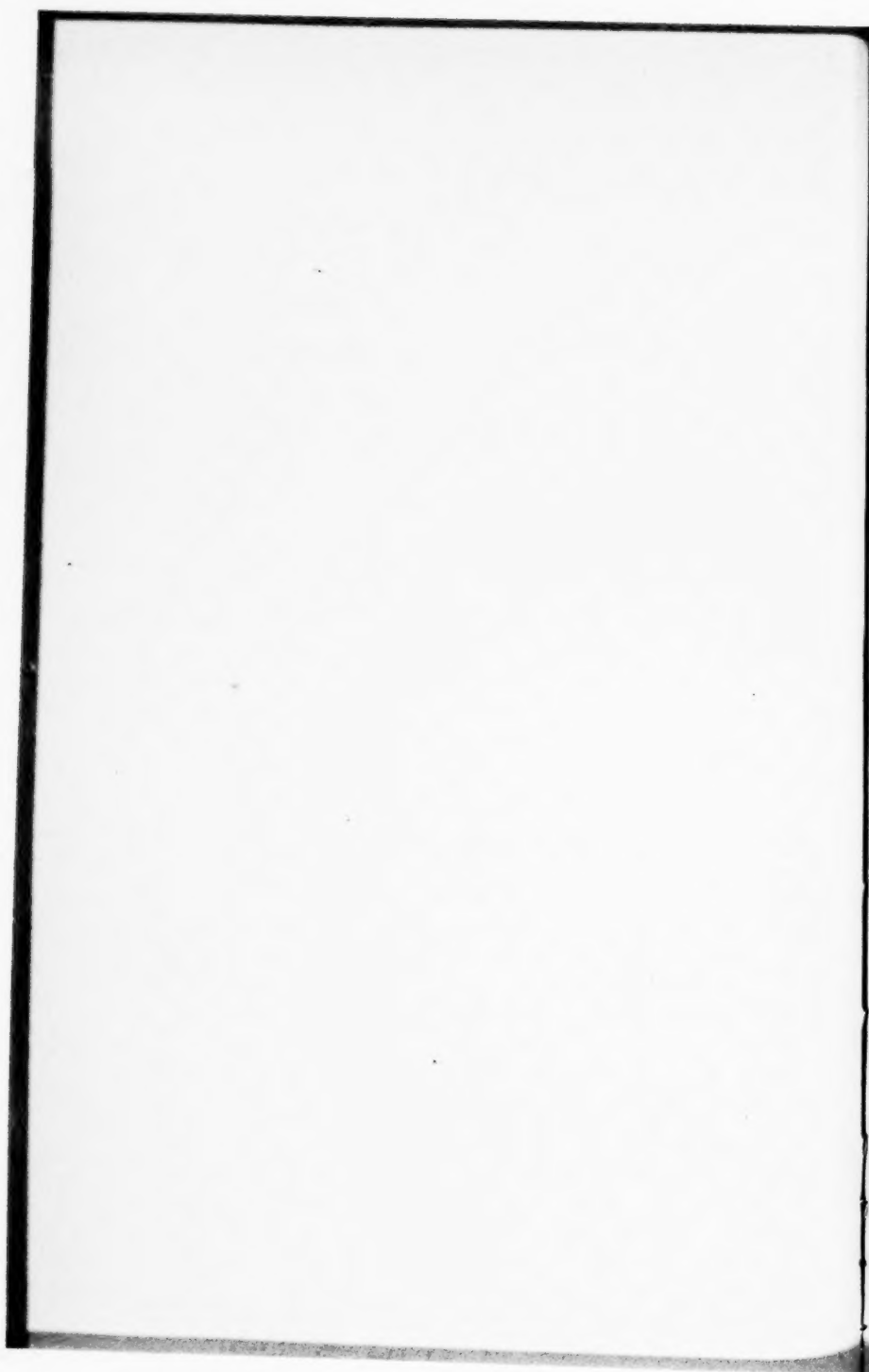
CAROLAN L. LAMBLEY,
Notary Public, Oklahoma County, Oklahoma.

[SEAL]

My Commission expires Dec. 15, 1924.

The above Bond is hereby approved this 29th day of July, A. D. 1922.

JOHN H. PITCHFORD,
*Acting Chief Justice of the Supreme
Court of the State of Oklahoma.*



In the Supreme Court of the State of Oklahoma.

MAGNOLIA PETROLEUM COMPANY, a joint stock association,
John Sealy, E. R. Brown, R. Waverly Smith, E. E. Plumly
and W. C. Proctor, as Trustees; STATE OF OKLAHOMA, *ex
rel* Commissioners of the Land Office of the State of
Oklahoma, and S. P. Freeling, Attorney General of the
State of Oklahoma, Plaintiffs in Error,

vs.

WILLIAM T. PRICE and ORA PRICE, Defendants in Error.

No. 12,243.

Petition in Error.

Come now the plaintiffs in error and complain of the said defendants in error for that in a certain action pending in the District Court of Stephens County, State of Oklahoma, where in the Magnolia Petroleum Company, a Joint Stock Association, John Sealy, E. R. Brown, R. Waverly Smith, E. E. Plumly and W. C. Proctor, as Trustees, Plaintiffs in Error, were plaintiffs, and the State of Oklahoma was an Intervenor therein, and the defendants in error were defendants, an order was made and entered on December 1st, 1920, overruling the motion to strike certain paragraphs of the answer of the defendants in error, and on the 1st day of December, 1920, a certain order was made by the said District Court overruling the demurrer of the plaintiffs therein to the answer of the defendants, and on the 3rd day of March, 1921, an order was made overruling the motion to strike, made and filed by the State of Oklahoma, as Intervenor, in said action, and an order on the same day was made and entered overruling a demurrer filed by the State of Oklahoma, the intervenor therein, and that on the 18th day of April, 1921, a certain order, decree and judgment, involving the merits of the action and a material part thereof, was entered in the District Court of said Stephens County, and on the 18th day of April, 1921, a final order was entered in said Court overruling the motion for a new trial filed by each of the plaintiffs in error, and on the said 18th day of April, 1921, the said order, judgment and decree vacated and dissolved the temporary injunction theretofore issued against the defendants in error, and appointed a Receiver for the property in controversy, and that there was error in each and all of the

said proceedings, orders, judgments and decrees as follows, to wit:

1. That the said District Court erred in overruling the motion of the Magnolia Petroleum Company to strike certain paragraphs and matters from the answer of the defendant in error, as appears from page 87 of the case-made.

2. That the said District Court erred in overruling the demurrer of the plaintiffs to the answer of the defendants, as appears on page 90 of said case-made.

3. That the District Court erred in overruling the motion of the State of Oklahoma to strike certain matters from the answer of the said defendants, found on page 103 of the record.

4. That the said District Court erred in overruling the demurrer filed by the State of Oklahoma, found on page 103 of the record.

5. That the District Court erred in entering a judgment found on page 337 of the record and in each and every paragraph of the said judgment.

6. That the District Court erred in refusing to make the injunction permanent, issued in said action.

7. That the District Court erred in finding the issues in favor of the defendants.

8. That the District Court erred in overruling the motion for new trial filed by the Magnolia Petroleum Company, appearing on pages 242-3 of the record.

9. That the District Court erred in overruling the motion for new trial of the State of Oklahoma, found on pages 345-6 of the record.

10. That the District Court erred in the admission of the evidence of the defendants, and in the admission of each and all of such evidence.

11. That the District Court erred in the appointment of a Receiver in said action.

12. That the District Court erred in admitting incompetent, irrelevant and immaterial evidence on the part of the defendants.

That there is hereto attached and marked "Exhibit A", a duly certified case-made, properly attested and filed, and a transcript of the proceedings of the said Court, and the said errors appear fully in said record and proceedings shown by said case-made and transcript.

Wherefore, Plaintiffs in error pray that the said judgment

so rendered may be reversed, set aside and held for naught, and that a judgment may be rendered in favor of the plaintiffs in error and against the defendants in error upon the admitted facts in said record, and that the plaintiffs be restored to all the rights that they have lost by the rendition of such judgment, and that a supersedeas issue in said action, pending a final hearing, and that the Receiver be discharged, and that the injunction be continued in force; and for such other relief as the Court may deem just.

S. P. FREELING,

Attorney General,

GEO. E. MERRITT,

B. B. BLAKENEY,

HUBERT AMBRISTER,

Attorneys for Plaintiffs in Error.

Endorsed: Filed in Supreme Court of Oklahoma April 30, 1921. William M. Franklin, Clerk.

STATE OF OKLAHOMA,
Stephens County.

In the District Court.

No. 12,243.

MAGNOLIA PETROLEUM COMPANY, a Joint Stock Association;
John Sealy, E. R. Brown, R. Waverly Smith, E. E.
Plumly, and W. C. Proctor, as Trustees, Plaintiff.

vs.

WILLIAM T. PRICE, and his wife, ORA PRICE, Defendants.

CASE-MADE.

Fled in District Court, April 28, 1921. G. A. Witt, Court Clerk. Jessie T. Barnes, Deputy.

Filed in Supreme Court of Oklahoma, April 30, 1921.
William M. Franklin, Clerk.

STATE OF OKLAHOMA,
Stephens County.

In The District Court.

MAGNOLIA PETROLEUM COMPANY, a Joint Stock Association;
John Sealy, E. R. Brown, R. Waverly Smith, E. E.
Plumly, and W. C. Proctor, as Trustees, Plaintiff.

vs.

WILLIAM T. PRICE, and his wife, ORA PRICE, Defendants.

No. —————

Petition for Injunction.

Comes now the plaintiff, The Magnolia Petroleum Company, and represents that it is a joint stock association organized and existing under and by virtue of the laws of the State of Texas and licensed to do business within the State of Oklahoma, and that the defendants, William T. Price, and Ora Price, are residents of Stephens County, Oklahoma. The plaintiff for its cause of complaint against the defendants alleges and states:

First. That the State of Oklahoma is the owner of the following described real estate situated in Stephens County, Oklahoma, to wit:

The Northeast Quarter of Section 33, Township 1
South, Range 8 West,

and that on the 4th day of January, 1919, said State of Oklahoma, acting by and through the Commissioners of the Land Office of the State of Oklahoma, made, executed and delivered to the plaintiff an oil and gas mining lease on the above described land. A copy of said oil and gas mining lease is attached to this petition and made a part of the same and marked plaintiff's Exhibit "A".

Second. Plaintiff alleges that said defendants, William T. Price and Ora Price, are in possession of said premises, using the same for agricultural purposes; that on the 22nd day of March, 1916, the State of Oklahoma, acting by the Commissioners of the Land Office of the State of Oklahoma, made, executed and delivered to said defendants an agricultural

lease on the above described premises for a term of five years. A copy of said agricultural lease in blank is attached to this petition and made a part of same and marked plaintiff's Exhibit "B."

Third. The plaintiff further alleges that under and by the terms of said oil and gas mining lease it has the exclusive right to prospect for, extract, pipe, store and remove oil and natural gas from said above described premises and to occupy and use so much of the surface thereof as may be reasonably be necessary to carry on the work of prospecting for, extracting, piping, storing and removing such oil and natural gas. Also the right to obtain from wells or other sources on said land by means of pipe lines or otherwise, a sufficient supply of water to carry on said operations, except the private wells or ponds of the surface owner or lessee, and also the right to use, free of cost, oil and natural gas as fuel so far as necessary to the development and operation of said property.

The plaintiff further alleges that said premises are in the same section of land as what is known as Empire Well No. 1, which has been recently "drilled in" in that section and which is now producing approximately 800 barrels of oil per day and that drilling for oil and gas is being done in all directions from said quarter section of land and that it is necessary in order to protect the interests of the State of Oklahoma and the rights of the plaintiff under said oil and gas lease that said above described premises should be developed for oil and gas. That there are a number of wells being drilled for oil and gas in the southwest quarter of said section of land, which are about down to the sand expected to be found in that vicinity and there is also a well being drilled just northeast of said above described premises in which the casing has been set and is expected to be drilled into the sand within a few days. If oil or gas should be found in paying quantities in any of the surrounding wells being drilled it will be necessary for the plaintiff, under said oil and gas mining lease, to immediately explore and develop said above described premises for oil and gas, in order to hold its contract with the State of Oklahoma, and it is therefore necessary for the plaintiff to begin operations for the development of said premises at this time and immediately. The plaintiff further

alleges that on the 24th day of May, 1920, acting by and through its duly authorized representatives, it went upon said above described premises for the purpose of making a location for the drilling of a well; that the place it decided to make the location is in the southwest quarter of southwest quarter of northeast quarter of said Section 33, Township 1 South, Range 8 West, and that the said defendant, William T. Price, objected to the defendant going on said premises and making said location or on any part of said premises and absolutely refused to permit the plaintiff to go on said location or any part of said premises for the purpose of drilling thereon for oil and gas, and forbade plaintiff from going on said premises for said purposes and ordered its representatives to keep off the same and positively refused to allow the plaintiff, its agent or employees, to go upon said premises for the purpose of drilling for oil and gas or making any development thereon, or any part of the same. The plaintiff is now ready and desires to immediately begin the erecting of a derrick on said location above described and to begin preparation to drill a well thereon and to explore and develop all of said premises for oil and gas. And the plaintiff is being deterred from said action by the acts and conduct of the defendants aforesaid.

The plaintiff further alleges and states that it offered to pay the defendants for any loss or damage they might sustain by reason of the plaintiff moving on said premises and on said location and to his crops and to pay him for any labor that he may lose by reason of the plaintiff moving on said location or on said premises but that the defendants still refused to allow the plaintiff to go upon said premises for the purposes aforesaid.

Fourth. The plaintiff further allege that they have no adequate, speedy or sufficient remedy at law and that the defendants are not able to respond in damages to the plaintiff for their acts and conduct as aforesaid.

Wherefore, the plaintiff prays the Court for a permanent order enjoining the defendants, and each of them, from, in any manner, interfering with the plaintiff in its drilling operations or other operations or exploration on said premises for oil and gas and that a day be set for this Court for a hearing

on this petition and that pending a hearing of this petition for said permanent injunction the plaintiff prays for a temporary restraining order restraining the defendants from interfering with the plaintiff in going on or upon the said premises and making preparations to drill wells for oil and gas or in drilling wells thereon for oil and gas or in any manner interfering with the plaintiff in operating for oil or gas and in the operation and development of the same as aforesaid under said oil and gas mining lease. That said restraining order be immediately issued by this Court and that the costs of this proceedings be taxed against the defendants.

WOMACK & BROWN,
BLAKENEY & MAXEY,
Attorneys for Plaintiff.

STATE OF OKLAHOMA,
Stephens County.

Ralph Talley being first duly sworn says upon his oath: That he has read the foregoing petition and knows the contents thereof and that the same is true and correct. That his affidavit is made for the Magnolia Petroleum Company and that the President nor none of the officers or directors of the Magnolia Petroleum Company are in Stephens County, Oklahoma, at this time; that the affiant is their duly authorized agent and that by reasons aforesaid this affidavit is made by said agent.

RALPH TALLEY.

Subscribed and sworn to before me this 25th day of May, 1920.

O. P. WILKINSON,
Notary Public.

(Seal)

My Commission expires January 17th, 1924.

Endorsed: (No exhibits attached). No. 2885. Filed in District Court May 25, 1920. G. A. WITT, Court Clerk.

STATE OF OKLAHOMA,
Stephens County.

In the District Court.

MAGNOLIA PETROLEUM COMPANY, a Joint Stock Association;
John Sealy, E. R. Brown, R. Waverly Smith, E. E.
Plumly, and W. C. Proctor, as Trustees, Plaintiff.

vs.

WILLIAM T. PRICE, and his wife, ORA PRICE, Defendants

No. —————

Amended Petition

Comes now the plaintiff, The Magnolia Petroleum Company, and represents that it is a joint stock association organized and existing under and by virtue of the laws of the State of Texas and licensed to do business within the State of Oklahoma, and that the defendants, William T. Price and Ora Price, are residents of Stephens County, Oklahoma. The plaintiff for its cause of action and complaint against the defendants alleges and states:

First. That the State of Oklahoma is the owner of the following described real estate situated in Stephens County, Oklahoma, to wit:

The Northeast Quarter of Section 33, Township 1
South, Range 8 West.

and that on the 4th day of January, 1919, said State of Oklahoma, acting by and through the Commissioners of the Land Office of the State of Oklahoma, made, executed and delivered to the plaintiff an oil and gas mining lease on the above described land. A copy of said oil and gas mining lease is attached to this petition and made a part of the same and marked plaintiff's "Exhibit A".

Second. Plaintiff alleges that said defendants, William T. Price and Ora Price, are in possession of said premises, using the same for agricultural purposes; that on the 22nd day of March, 1916, the State of Oklahoma, acting by the Commissioners of the Land Office of the State of Oklahoma, made, executed and delivered to said defendants an agricultural

lease on the above described premises for a term of five years. A copy of said agricultural lease in blank is attached to this petition and made a part of same and marked plaintiff's "Exhibit B".

Third. Plaintiff alleges that heretofore, to wit, on the 26th day of August, 1915, the Commissioners of the Land Office of the State of Oklahoma, in a regular duly held session in the office of the Secretary of State, at Oklahoma City, made and had the following proceedings in *re.* segregation of land for oil and gas purposes:

The Secretary presented the following recommendation to the board for approval:

"Whereas, we have had offers from reputable parties to place oil and gas bids on the following unsegregated school lands, I hereby recommend that the following described lands be segregated for oil and gas purposes, and that they be advertised for bids for leasing * * * * the Northwest Quarter of Section 33, Township 1 South, Range 8 West, Stephens County, * * * *. After discussion by the Board, it was thereupon moved by Mr. Lyon and seconded by Mr. Howard that the above sections and quarter sections be declared valuable for mineral purposes, and that the same be segregated and withheld from sale."

All voted aye and the motion prevailed, and there was duly entered of record in said office their said finding, declaring that such oil or gas character exists, and further declaring that the oil and gas deposits are segregated from the surface use and interest therein, and such segregation of such deposits thereby conclusively withhold the same from sale, lease or other alienation, except as provided by the laws of Oklahoma. And thereafter, the said Commissioners, desiring to lease said land for oil and gas purposes to the same extent and in the same manner as a private owner of land in fee could in his own right execute a grant thereto, did duly authorize the advertisement of the said tract for leasing for oil and gas purposes and for bids to be made thereon, and after due advertisement an oil and gas lease thereon was duly sold to the plaintiff herein and a lease duly executed as shown by Exhibit "B".

Fourth. The plaintiff further alleges that under and by the

terms of said oil and gas mining lease it has the exclusive right to prospect for, extract, pipe, store and remove oil and natural gas from said above described premises and to occupy and use the same and so much of the surface thereof as may be reasonably necessary to carry on the work of prospecting for, extracting, piping, storing and removing such oil and natural gas. Also the right to obtain from wells or other sources on said operations (land), except the private wells or ponds of the surface owner or lessee and also the right to use, free of cost, oil and natural gas as fuel so far as necessary to the development and operation of said property.

The plaintiff further alleges that said premises are in the same section of land as what is known as Empire Well No. 1, which has been recently drilled in that section and which is producing approximately 800 barrels of oil per day and that drilling for oil and gas is being done in all directions from said quarter section of land; that it is necessary, in order to protect the interest of the State of Oklahoma and the rights of the plaintiff under said oil and gas lease, that said above described premises should be developed for oil and gas. That there a number of wells being drilled for oil and gas in the Southwest Quarter of said section of land, which are down about to the sand expected to be found in that vicinity, and there is also a well being drilled just northwest of said above described premises in which the casing has been set and is expected to be drilled into the sand within a few days. If oil or gas should be found in paying quantities in any of the surrounding wells being drilled, it will be necessary for the plaintiff, under said oil and gas mining lease, to immediately explore and develop said above described premises for oil and gas in order to hold its contract with the State of Oklahoma, and it is therefore necessary for the plaintiff to begin operations for the development of said premises at this time and immediately. The plaintiff further alleges that on the 24th day of May, 1920, acting by and through its duly authorized representatives, it went upon said above described premises for the purpose of making a location for the drilling of a well; that the place it decided to make the location is in the Southwest Quarter of the Northeast Quarter of said Section 33, Township 1 South, Range 8 West, and that the said defendant, William T. Price, objected to the plaintiff going on said pre-

mises and making said location, or on any part of said premises and absolutely refused to permit the plaintiff to go on said location or any part of said premises for the purpose of drilling thereon for oil and gas and forbade plaintiff from going on said premises for said purposes and ordered its representatives to keep off the same, and threatened plaintiff and its agent with bodily injury, and by force and violence refused to allow the plaintiff, its agents or employees, to go upon said premises for the purpose of drilling for oil and gas or making any development thereon, or any part of the same. The plaintiff is now ready and desires to immediately begin erecting a derrick on said location above described, and to begin preparation to drill a well thereon and to explore and develop all of said premises for oil and gas. And the plaintiff is being deferred from said action by the acts and conduct of the defendants aforesaid.

The plaintiff further alleges and states that it offered to pay the defendants for any loss or damage that they might sustain by reason of the plaintiff moving on said premises and on said location, to their crops, and to pay them for any labor that they might lose by reason of the plaintiff moving on said location or on said premises, but that the defendants still refused to allow the plaintiff to go upon said premises for the purposes aforesaid.

Fifth. That after the filing of the original petition, plaintiff drilled two wells to a depth of about 1700 feet to the oil and gas bearing sand, and discovered oil and gas in paying quantities, and is now producing 120 barrels of oil per day from the said premises and marketing the same, and two other wells are in the course of drilling, one of which has reached the sand, but is not drilled in. That the amount and value of said oil cannot be stated or determined, and that unless plaintiff is permitted to continue the development and production of such oil, it will be subjected to irreparable injury, which can not be estimated or determined with any accuracy in a proceeding at law, and the defendants would be wholly unable to respond in damages for such damages as would be sustained.

Sixth. That under and by virtue of the terms of the lease attached to the said petition and marked Exhibit "A", the defendants right terminated and expired on the 31st day of December, 1914, and the defendant, desiring to renew said

lease, under and by virtue of said rules adopted by the Commissioners of the Land Office of the State of Oklahoma, by G. A. Smith, Secretary of the Commissioners of the Land Office of the State of Oklahoma, entered into an extension agreement with the said W. T. Price, the defendant herein, by the terms of which the said W. T. Price agreed, among other things, that his lease and right to possession of said land, and interest therein, should be subject to all the laws of the State of Oklahoma which are now or may hereafter be in force and effect, and which may hereafter be passed. A copy of the said extension agreement, duly executed by said defendant, is hereto attached and marked Exhibit "C" and made a part hereof; that thereafter, under the laws of said State as hereinbefore stated, the said Northeast Quarter of Section 33, Township 1 South, Range 8 West, was by the Commissioners of the Land office, designated, set apart, segregated and reserved as mineral, oil and gas lands, as provided by the laws of the State of Oklahoma, and the said W. T. Price was in the possession of said land without any renewal of his former lease, but under the terms and conditions of the said laws and the said extension agreement, and thereby agreed to and consented to such segregation and the action of the said Commissioners of the Land Office in selling the oil and gas rights and in executing the lease to the plaintiff passed all the oil and gas rights to this plaintiff.

That subsequent to the expiration of said lease and its extension, the defendant continued to occupy said premises, holding over from year to year under the rules and regulations of the said Commissioners and the laws of said State, and the Commissioners accepted from time to time the annual rentals and adopted a rule providing that any person who did not execute a new lease, but held over, should be presumed to hold over under the terms and conditions of the old lease and the extension thereof and the rules and regulations of the Commissioners and the laws of the said State, and such rules and regulations were known to the defendant and he held over subject to their terms and conditions.

That in 1916, as required by law, the Commissioners were required to appraise said land, and appraised the same and fixed the rentals at \$95.00 a year and the said defendant recognizing the rules and regulations and law authorizing such ap-

praisement and increase of rentals, paid since 1916, \$95.00 a year, each year, rental for said land.

Seventh. The plaintiff further alleges that it has no adequate, speedy or sufficient remedy at law, and that the defendants are not not able to respond in damages to the plaintiff for their acts and conduct as aforesaid.

Wherefore, the plaintiff prays the Court for a permanent order, enjoining the defendants, and each of them, from in any manner interfering with the plaintiff in its drilling operations or other operations or explorations on said premises for oil and gas, and that a day be set for this court for a hearing on this petition and that, pending a hearing of this petition for said permanent injunction, the plaintiff prays for a temporary injunction order restraining the defendants from interfering with the plaintiff in going upon said premises and making preparation to drill wells for oil and gas or in drilling wells thereon for oil and gas or in any manner interfering with the plaintiff in operating for oil and gas and developing the same as aforesaid under said oil and gas mining lease.

That said restraining order be immediately issued by this court and that the costs of this proceeding be taxed against the defendants.

WOMACK & BROWN,
BLAKNEY & MAXEY,
Attorneys for Plaintiff.

STATE OF OKLAHOMA,
Oklahoma County, ss:

B. B. Blakney, being first duly sworn, says upon oath that he has read the foregoing amended petition and knows the contents thereof, and that the same is true and correct. That this affidavit is made for the Magnolia Petroleum Company and the president nor none of the officers or directors of the Magnolia Petroleum Company are in Oklahoma County, Oklahoma, at this time; that the affiant is their duly authorized agent and attorney, and that by reasons aforesaid this affidavit is made by said agent.

B. B. BLAKENEY.

Subscribed and sworn to before me this 4th day of November, 1920.

[SEAL]

G. A. WITT,
Court Clerk, Stephens County, Oklahoma.

EXHIBIT "A"

THE STATE OF OKLAHOMA

Oil and Gas Mining Lease.

T-162.

This indenture of lease, made and entered into in duplicate, on this the 4th day of January, A. D., 1919, by and between the Commissioners of the Land Office of the State of Oklahoma, acting for and in behalf of the State of Oklahoma, parties of the first part, hereinafter designated as lessor, and Magnolia Petroleum Company, John Sealey, E. R. Brown, R. Waverly Smith, E. E. Plumly, and Geo. C. Greer, as Trustee, Box 1667, of Dallas, Texas, party of the second part, hereinafter designated as lessee, under and in pursuance of the provisions of the Constitution and laws of the State of Oklahoma relating to the segregation of the oil and gas deposits and the leasing thereof on school and other public lands belonging to the State of Oklahoma, witnesseth:

1. The lessor, for and in consideration of eight thousand (\$8,000.00) dollars, the receipt whereof is hereby acknowledged, and the royalties, covenants, stipulations and conditions hereinafter contained and hereby agreed to be paid, observed and performed by the lessee, and his lawful assigns, does hereby demise, grant, lease and let unto the lessee for the term of five years from the date hereof, and as long thereafter as oil or gas or either of them is produced in paying quantities, all the oil deposits and natural gas in or under the following described tract of land lying and being within the County of Stephens, in the State of Oklahoma, to wit:

The Northeast Quarter of Section Thirty-three (33), Township One (1) South, Range Eight (8) West of the Indian Meridian, and containing 160 acres, more or less, with the exclusive right to prospect for, extract, pipe, store, and remove oil and natural gas, and to occupy and use so much only of the surface of said land as may reasonably be necessary to carry on the work of prospecting for, extracting, piping, storing, and removing such oil and natural gas. Also the right to obtain from wells or other sources on said land by means of pipe lines or otherwise, a sufficient supply of water to carry on said operations, except the private wells or ponds of the surface owner or lessee, and also the right to use, free of cost,

oil and natural gas as fuel as far as necessary to the development and operation of said property.

2. The lessee hereby agrees to deliver or cause to be delivered to the Commissioners of the Land Office of the State of Oklahoma, or their successors, a royalty of one-eighth part of the oil or gas produced from the leased premises or in lieu thereof pay to the State the market value of said royalty interest, as the Commissioners may elect. All oil and gas due to the State under this contract, shall be delivered by the lessee herein, free of cost, into pipe lines, tanks or cars, or settled or paid for before removing the same from the premises if handled in any other way. The lessee shall furnish to the lessor certified copies of gauge tickets, sales shipments and amount of gross production, at their offices in Oklahoma City. Gas to be metered on the premises under high pressure unless some other method of gauging and metering same shall be hereafter agreed upon by the parties hereto in writing.

3. The lessee shall exercise diligence in sinking wells for oil and natural gas on the land covered by this lease, and shall drill a sufficient number of wells to offset the wells upon adjoining contiguous premises, said offset wells to be commenced within ten days after completion of any producing well upon such adjoining contiguous premises, unless a different time is prescribed by notice in writing from the lessor, and be prosecuted diligently and continuously until completed; and the said lessee shall operate the leased premises for oil and gas to same extent as individual and corporate premises are being operated within the general oil and gas fields where such land is located, and failure to faithfully comply with the provisions shall be cause for forfeiture of this lease to the State.

At least one producing oil or gas well in paying quantities shall be drilled and completed within one year from the date hereof, or failing to do so the lessee shall pay to the lessor for each whole year the completion of such well is delayed, for not to exceed five years from the date hereof, in addition to the other consideration named herein, a rental of one (\$1.00) dollar per acre, payable annually, in advance, and if the lessee shall fail to drill at least one such well within any such yearly period, and shall fail to surrender this lease on or before the end of any such year during which the completion of such well is delayed, such failure shall be taken as conclusively evidencing the election and covenant of the

lessee to pay the rental of One (\$1.00) Dollar per acre for such year, and thereupon the lessee shall be absolutely obligated to pay such rental. The failure of the lessee to pay such rental before the expiration of fifteen (15) days after it becomes due at the end of any yearly period during which a well has not been commenced as herein provided shall be a violation of one of the material and substantial terms and conditions of this lease, and be cause for cancellation thereof, but such cancellation shall not in any wise operate to release or relieve the lessee from the covenants and obligations to pay such rental or any other accrued obligation. It being understood that the completion of one well producing oil or gas in paying quantities during the life of this lease, shall relieve the lessee of all future liability for said \$1.00 per acre hereunder, but the lessee shall, nevertheless remain obligated to drill an offset, or necessary offsets, and other wells necessary to the proper development and operation of said lease as herein otherwise provided; and provided further that unless a producing well of oil or gas is completed on the above described premises within five years from date hereof, this lease shall be void.

4. The lessee shall carry on the development and operation in a workmanlike manner; commit no waste on said land, and suffer none to be committed upon the portion in his occupancy; take good care of the same, and promptly surrender and return said premises upon the termination of this lease to the lessor, or to whomsoever shall be lawfully entitled thereto unavoidable casualty only excepted.

All tools, derricks, boilers, boiler houses, pipe lines, pumping and drilling outfits, tanks, engines and machinery, and the casing of all dry or exhausted wells, shall remain the property of the lessee, and may be removed at any time prior to or at the termination of the lease by forfeiture or otherwise; and the lessee shall not permit any nuisance to be maintained on the premises; and shall not use said premises for any purposes then those authorized in the lease, and before abandoning any well, shall securely plug the same so as to effectually shut off all water from the oil bearing stratum, or in the manner required by the laws of the State of Oklahoma.

5. The lessee shall keep an accurate account of all oil and gas mining operations, including a log of each well drilled, duly sworn to by the contractor or driller, which shall be

filed with the Secretary to the Commissioners of the Land Office within thirty days after said well is completed. Accurate and reliable information concerning all wells and their operations and management shall be furnished to the Commissioners of the Land Office or their representative upon demand. The said lessee shall keep an accurate account showing the sales, prices, dates, purchases, and the whole amount of oil and gas mined or removed, and all sums due as royalties shall be a lien on the implements, tools and movable machinery or personal chattels used in operating said property, and also upon all the unsold oil and gas obtained from the land herein leased as security for the payment of said royalties.

6. The lessee shall be liable to the surface owner or surface lessee for all damages or loss accruing to the surface interests in said land, and to all crops and improvements thereupon and appurtenances and hereditaments thereunto belonging by reason of the oil or gas mining operations hereunder, and in the event the amount of such damages cannot be agreed upon by the lessee hereof and such surface owner or lessee, then the amount of such damages shall be determined as is or may be provided by law. The lessee hereof further agree to pay all such damages within ten days after the amount thereof is determined, and the amount of such damages may be recovered from the lessee hereof and his sureties upon the bond given to secure the faithful performance of this lease.

7. This lease shall be subject to the Constitution and laws of the State of Oklahoma, and the rules and regulations of the Commissioners of the Land Office now or hereafter in force relative to such leases; all of which are made a part and condition of this lease; provided, that no regulations made after the execution of this lease affecting either the length of the term hereof, the rate of royalty, or payment hereunder or the assignment hereof, shall operate to affect the terms and conditions of this lease.

8. No transfer or assignment of this lease or any part thereof, shall be valid, or convey any right in the assignee without the consent in writing of the Commissioners of the Land Office; and such assignee shall furnish a bond to the satisfaction of the Commissioners of the Land Office conditioned for the faithful performance of the covenants and conditions of this lease, and pay an assignment fee of five dollars.

9. Before this lease shall be in force and effect the lessee shall give a good and sufficient bond in the sum of One Thousand (\$1,000.00) Dollars, to be approved by the Commissioners of the Land Office, for the faithful performance of this lease.

10. Upon the violation of any of the substantial terms or conditions of this lease, the Commissioners of the Land Office shall have the right at any time after hearing upon ten days notice, given by registered mail to the last known address of such lessee, or by posting notice in writing in a conspicuous place upon the said premises, specifying the terms or conditions violations, to declare this lease null and void; and the said Commissioners for and on behalf of the State of Oklahoma, shall be entitled to recover from the lessee's bondsmen, all rents, royalties, charges, claims of every kind and nature due and owing and accruing and arising out of and by reason of this lease, on failure to comply with the provisions thereof, and the lessors shall be entitled and authorized to take immediate possession of the land.

11. It is further agreed that for any refinery of crude oil and its products, owned and controlled by the State of Oklahoma, the State shall have the preference right to purchase and receive the output from said premises at the market price thereof; provided, that this clause shall not prevent the lessee from selling the output of said leases to any person, firm, corporation whatsoever until notice in writing from the Commissioners of the Land Office shall be served on the lessee that the State is ready to take such oil and gas or either of them and all sale of oil and gas or either of them under this proviso shall be valid and binding.

12. The lessee may at any time hereafter surrender and wholly terminate this lease upon payment of the rentals and other liabilities then accrued and due hereunder, and may exercise such right by filing a formal relinquishment and release of the said lease with the Secretary to the Commissioners of the Land Office; provided, that if such lease has been recorded, by causing the release thereof to be filed and recorded in the proper recording office, and upon a compliance with these requirements such lessee shall thereby be relieved from liability for rental thereafter accruing.

13. The surface owner or lessee of the said premises shall have gas free of cost from any well on said premises for

domestic use thereon by making his own connection with the well.

This contract is made subject to the Declaration of Trust of the Trustees of the Magnolia Petroleum Company, of day of April 24th, 1911, a copy of which is on file with the Secretary of State, and the Corporation Commission of the State of Oklahoma, at Oklahoma City, reference to which is hereby made, under which the parties contracting with the Magnolia Petroleum Company and the trustees thereof, must look alone to the property and assets of said Magnolia Petroleum Company for the satisfaction and payment of any demands against it, and the trustees and the stockholders are not to be held personally liable, which is agreed by the lessor herein.

In witness whereof, the parties hereunto subscribed their signatures on the day and year first above written.

COMMISSIONERS OF THE LAND OFFICE
OF THE STATE OF OKLAHOMA.

By R. L. Williams,

Governor and Chairman.

[SEAL]

Attest:

A. R. McKinney,

Secretary to the Commissioners of the Land Office.

MAGNOLIA PETROLEUM COMPANY,

Lessee.

By H. W. Williams,

Agent and Attorney in Fact.

Attest:

Secretary.

STATE OF OKLAHOMA,

Oklahoma County, ss:

Personally appeared before me, the undersigned Notary Public, within and for said County and State, R. L. Williams, to me known to be the person who subscribed the name of The Commissioners of the Land Office of the State of Oklahoma to the foregoing instrument, as its Chairman, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and

deed of such Commissioners of the Land Office, for the uses and purposes therein set forth.

LILLIAN A. DENNIS,
Notary Public.

[SEAL]

My commission expires August 18, 1920.

Acknowledgment for Individual.

STATE OF OKLAHOMA,
Oklahoma County, ss:

Personally appeared before me, the undersigned Notary Public within and for said County and State, H. W. Williams, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed, for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my hand and notarial seal on this 11th day of January, 1919.

LILLIAN A. DENNIS,
Notary Public.

[SEAL]

My commission expires August 18, 1920.

“EXHIBIT B”

Received Jan. 14, 1913.
Secretary.

Lease for Public Lands of the State of Oklahoma.

This lease made by and between the Commissioners of the Land Office of the State of Oklahoma, a Commission having charge of the sale, rental, disposal and management of the school and other public lands of the State of Oklahoma, and acting on behalf of said state, and hereinafter designated as parties of the first part, and William T. Price of Comanche and hereinafter designated as party of the second part, witnesseth:

That the said parties of the first part by virtue of the authority vested in them by the Constitution and Laws of the State of Oklahoma and in consideration of the covenants of the said party of the second part hereinafter set forth, hereby lease and let unto the said party of the second part the following described public land granted to said state by the

Congress of the United States, to wit: The northeast quarter of section 33, township 1 south, range 8 west, of the Indian Meridian in Stephens County, State of Oklahoma, to have and to hold the same for a period of two years from the first day of January, 1913, to and including the 31st day of December, 1914; provided, however:

This lease is made subject to the rights of the State of Oklahoma to sell and convey the land herein described at any time and that upon such sale, if any be provided by law prior to the expiration of this lease, the same shall thereupon expire, and the party of the second part shall as the lessee, shall be entitled to same at the highest bid, subject to such conditions limitations, restrictions, and exceptions as may be provided by law.

And as a consideration for the leasing of said land, the said party of the second part hereby agrees to pay to the said party of the first part, as rent therefor, the total sum of one hundred thirty one and no/100 dollars in installments as follows:

Sixty-five and 50/100 dollars for the first day of October, 1913, sixty-five and 50/100 dollars for the first day of October, 1914.

The said deferred payments are evidenced by two certain promissory notes of even date herewith and payable as above specified and signed by said party of the second part as principal and one qualified person, a resident of said state, as surety.

And as a security for the payment of the above described notes at the time the same are due and payable, the said party of the second part hereby expressly grants and gives unto the State of Oklahoma a first lien upon all crops and improvements now located, or which may be placed or made upon said land during the term of this lease.

Said party of the second part may, at the termination of this lease, remove any or all of his improvements, and he shall have the right to harvest or remove any growing crop on said land, provided, however; that in case said party of the second part is in default for non-payment of any rental or assessment of any nature, he shall not be allowed to remove such improvements or make such entry to secure crops until all arrearage is fully satisfied, said improvements that are

movable shall then be moved immediately within sixty days from termination of this lease.

If the said party of the second part shall be in default of the annual rental due the state for a period of three months and such delinquency is not paid within thirty days from the time of service of notice of delinquency, the parties of the first part shall declare this lease forfeited as by law provided and the land herein described shall revert to the State of Oklahoma the same as though this lease had never been made; provided, however, in case of forfeiture as provided by Section 6 of Chapter 118, Session Laws of the State of Oklahoma, of the year 1910, the party of the second part has the right of redemption by paying all delinquencies, fees and costs of forfeiture at any time before such land is advertised to be leased. The improvements now located or which may hereafter be placed on said described land in case of forfeiture and reverting of said land to the state as by law provided shall be sold under the direction of the Commissioners of the Land Office at public or private sale, upon due notice to the party of the second part, and the proceeds received therefrom shall inure to the said party of the second part after payment shall have been made to the state for all delinquencies and rents and expenses incurred in making such sale.

The said party of the second part hereby agrees, binds and obligates himself that he will not cut or remove, or permit to be cut or removed any timber from said land, that he will not quarry or remove, or permit to be quarried or removed, any building or valuable stone, from said land, that he will not mine or move or permit to be mined or moved any minerals therefrom, and that he will not remove or take from said land any sand or gravel or other deposits of like character without first obtaining written authority so to do as by the laws of said state provided. The said party of the second part hereby agrees, binds and obligates, that he is leasing said land for agricultural and grazing purposes and that he will use and occupy the same for no other purposes and that he will care for and cultivate the same in a husbandlike manner and that he will protect said land from waste and that he will not permit or suffer any waste or trespass to be committed on or against said land. The said party of the second part hereby agrees, binds and obligates himself that he will not assign,

transfer, or relinquish this lease and his interest therein and his interest in the improvements without the consent and approval of the said parties of the first part, and that he will not sublease or underlet the said land or any part thereof without written permission being first obtained from the said parties of the first part.

And it is hereby agreed that the said party of the second part shall have the preference right to re-lease said land as provided by the laws of said state. If at any time after the execution of this lease it is shown to the satisfaction of the parties of the first part that there has been any fraud or collusion upon the part of the second party to obtain the same, said lease shall be declared null and void at the option of the parties of the first part.

And it is hereby expressly agreed and understood that a violation of any of the terms of this lease, or the laws of the State of Oklahoma, concerning the public lands of said state by the said party of the second part shall subject this lease to cancellation and upon proof of the violation of any of the terms of said lease or said laws being made to the Commissioners of the Land Office of the State of Oklahoma such Commissioners of the Land Office shall have the right to cancel and declare the same null and void and of no effect and take possession of said premises and re-lease the same as by law provided.

This lease is executed in duplicate.

In witness whereof, the said parties have caused their signatures to be subscribed hereto on this 2nd day of January, 1913.

COMMISSIONERS OF THE LAND OFFICE
OF THE STATE OF OKLAHOMA.

By Lee Cruce,
Chairman.

Attest:

Jno. R. Williams,
Secretary.

WILLIAM T. PRICE, *Lessee.*

[SEAL]

STATE OF OKLAHOMA,
Stephens County, ss.

Before me, G. W. Yeager, a Notary Public, in and for said

county and state on this 13th day of January, 1913, personally appeared William T. Price, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year last above written.

G. W. YEAGER,
Notary Public.

My commission expires Nov. 13, 1916.

[SEAL]

NOTE: The lines in this lease which are marked through appear the same way in the original lease with a red line drawn through the lines as indicated in this copy.

I, A. S. J. Shaw, duly elected, qualified and acting Secretary to the Commissioners of the Land Office of the State of Oklahoma, and custodian of the records of the said Commissioners, hereby certify that the attached copy of lease is a true and correct copy of the lease issued by the Commissioners to William T. Price, covering the northeast quarter of section 33, township 1 south, range 8 west, as shown by the records of this office.

Witness by hand and official signature at Oklahoma City, Oklahoma, on this the 29th day of May, 1920.

A. S. J. SHAW,
*Secretary to the Commissioners of
the Land Office, State of Oklahoma.*

[SEAL]

"EXHIBIT C."

Extension Certificate.

Whereas, on the 2nd day of January, 1913, the proper authorities having charge of leasing of state and school lands belonging to the State of Oklahoma, entered into a written lease or extension of lease with William P. Price, of Comanche P. O. for the following described lands situate in Stephens County, to wit: Northeast quarter of section 33, township 1 south, range 8 west, subject to sale under the directions of the Commissioners of the Land Office.

Whereas, under and by virtue of the terms thereof and the laws of the State of Oklahoma, said lease or extension of lease, expired on December 31st, 1914, and,

Whereas, it is provided under the terms of the said lease that the said lessee has the non-competitive preference right of renewal of the same, subject to the laws of the State of Oklahoma, and,

Whereas, on Nov. 16, 1914, the Commissioners of the Land Office of the State of Oklahoma, who have under and by virtue of the Constitution of said state, charge of the sale, rental, disposal and management of the school land and all public lands thereof, did, by resolution properly adopted, extend all leases or extensions thereof, on all lands expiring on December 31, 1914, up to and including the time of sale thereof, but in no case longer than December 31st, 1915, and directed the Secretary to said Commission to proceed to collect rents for the current year, then, this is to certify that the lease above described is hereby extended to and including the date of sale not longer than December 31st, 1915, such extension being made subject to all of the laws of the State of Oklahoma which are now or may hereafter be in force and effect, and which may hereafter be passed, and as a consideration for this extension and as rental for said described land for a period beginning on January 1st, 1915, and ending on December 31st, 1915, the said lessee binds and obligates himself to pay the Commissioners of the Land Office of the State of Oklahoma, the sum of sixty-five and 50/100 dollars, said payment to be made on or before October 1st, 1915.

This certificate is issued in duplicate.

In witness whereof, I have hereunto affixed my official signature as the duly acting and qualified Secretary to the Commissioners of the Land Office of the State of Oklahoma, on this Mar. 6, 1915, day of —, 1915.

G. A. SMITH,

*Secretary to the Commissioners of the
Land Office of the State of Oklahoma.*

I, _____, the above named lessee do hereby accept such extension under the terms and conditions above mentioned.

In witness whereof, I have hereunto affixed my signature this-----day of-----, 1915.

W. T. PRICE,
Lessee.

Witness to Signature:
J. M. STEPHENS
ERNEST E. BROWN.

That Thereafter, to wit: on November 18, 1920, there was filed in said cause by the defendants, An Answer to Amended Petition of Plaintiff, which answer so filed is in words and figures as follows, to wit:

In the District Court.

STATE OF OKLAHOMA,
Stephens County.

MAGNOLIA PETROLEUM COMPANY, a Joint Stock Association;
John Sealy, E. R. Brown, R. Waverly Smith, E. E.
Plumly, and W. C. Proctor, as Trustees, Plaintiff.

vs.

WILLIAM T. PRICE and ORA PRICE, his wife, Defendants.

Answer to Amended Petition.

Come now the defendants, William T. Price and Ora Price, and for their answer to the plaintiff's Amended Petition, allege and state:

FIRST COUNT.

Defendants allege that the plaintiff is the owner of and interested in pipe lines and transportation of oil and gas, both in Oklahoma and Texas, and is affiliated and confederated with companies and persons engaged in operating pipe lines and transportation of oils and gas both in Oklahoma and Texas, and by reason thereof the plaintiff herein cannot hold an oil and gas lease upon the public lands in the State of Oklahoma, and that any purported lease upon the northeast quarter ($\frac{1}{4}$) of section thirty-three (33), township one (1) south, range eight (8) west of the Indian Meridian to the plaintiff is, for that reason, null and void.

SECOND COUNT.

1. Defendants deny each and every allegation therein con-

tained, excepting such as are hereinafter specifically admitted.

2. Defendants deny that the State of Oklahoma is the absolute owner of the northeast quarter ($\frac{1}{4}$) of section thirty-three (33), township one (1) south, range eight (8) west, and alleges that the title of the State of Oklahoma and of these defendants is as hereinafter set out.

3. That under and by virtue of the Acts of Congress the President of the United States was authorized and empowered from time to time to reserve and set aside for the Territory of Oklahoma, and other territories, certain lands for public schools, penal institutions and public buildings, and that the President of the United States did set aside for such purposes sections 16 and 36 and sections 13 and 33, in Oklahoma Territory, and that under and by virtue of the Act of Congress approved June 6, 1900, 31 Stat. L., 680, Congress did set aside, together with other lands, section 33 for the Territory of Oklahoma and the future State of Oklahoma, and reserved said lands from sale or homestead entry. That said act applies to, and covers the lands involved in this controversy.

4. That under and by virtue of the Acts of Congress, and the Rules and Regulations of the Department of the Interior, prior to statehood, the Honorable Governor of the Territory of Oklahoma, the Honorable Secretary of the State of Oklahoma, and the Honorable Superintendent of Public Instructions of the Territory of Oklahoma were constituted a board for the leasing of public lands in the Territory of Oklahoma, and under and by virtue of said Act of Congress and said Rules and Regulations of the Secretary of the Interior and the laws in force at said time said board did execute leases to the public lands within the Territory of Oklahoma, and on that tract of land involved in this controversy, as hereinafter shown by leases set out.

5. That under and by virtue of an Act of Congress approved June 16, 1906, commonly known as the Enabling Act, Section 33, together with other lands in the territory comprising Oklahoma Territory and including the lands in controversy, were granted to the State of Oklahoma upon certain conditions, limitations and covenants with respect to their disposition and sale.

6. That under and by virtue of Section 10 of said Act of Congress approved June 16, 1906 (commonly known as the

Enabling Act), provision is made for the sale of Sections 13 and 33, including lands in controversy, and giving to the lessee the Preference Right to purchase in the following language, to wit:

“Preference Right to purchase at the highest bid being given to the lessee at the time of such sale.”

Said Act also provides that the Rules and Regulations for the sale of said land shall be as prescribed by the Legislature of said state, and also provides for the appraisement of said lands by three disinterested appraisers, non-residents of the county wherein said lands are situated, and the said appraisers so designated are required to make a true appraisement of said land at the actual cash value thereof, exclusive of improvements, and separately appraise the improvements at their fair and reasonable value, and that no sale shall be had for less than the appraised value of the land. That said Section 10 is as follows, to wit:

“That said sections thirteen and thirty-three, aforesaid, if sold, may be appraised and sold at public sale, in one hundred and sixty acre tracts or less, under such rules and regulations as the legislature of said state may prescribe, preference right to purchase at the highest bid being given to the lessee at the time of such sale, but such lands may be leased for periods of not more than five year, under such rules and regulations as the legislature shall prescribe, and until such time as the legislature shall prescribe such rules, these and all other lands granted to the state shall be leased under existing rules and regulations, and shall not be subject to homestead entry or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for designated purposes only, and until such time as the legislature shall prescribe as aforesaid said land shall be leased under existing rules; *Provided*, That before any of the said lands shall be sold, as provided in Sections nine and ten of this Act, the said land and the improvements thereon shall be appraised by three disinterested appraisers, who shall be non-residents of the county wherein the land is situated, to be designated as the legislature of said state shall prescribe, and the said appraisers shall make a true appraisement of said lands at the actual cash value thereof, exclusive of improvements, and shall separately appraise all permanent improvements thereon at their fair and reasonable cash

value, and in case the leaseholder does not become the purchaser, the purchaser at said sale shall under such rules and regulations as the legislature may prescribe, pay to or for the leaseholder the appraised value of said improvements, and to the state the amount bid for the said lands, exclusive of the appraised value of improvements; and at said sale no bid for any tract of land less than the appraisal thereof shall be accepted."

7. Section 22 of said Act approved June 16, 1906, commonly known as the Enabling Act, required the Constitutional Convention of the State of Oklahoma to irrevocably accept the terms and conditions of this Act as follows, to wit:

"That the Constitutional Convention provided for herein, shall, by ordinance irrevocable, accept the terms and conditions of this Act."

8. That thereafter and pursuant to the requirements and the privileges granted under the Enabling Act, the people of the proposed State of Oklahoma held their Constitutional Convention and said Constitutional Convention, duly assembled in said State of Oklahoma, did, on the 22nd day of April, 1907, pass the following ordinance, irrevocably accepting the terms, conditions and limitations of the Enabling Act in the following language, to wit:

"Be it ordained by the Constitutional Convention for the proposed State of Oklahoma, that said Constitutional Convention do, by this ordinance irrevocable, accept the terms and conditions of an Act of the Congress of the United States, entitled, 'An Act to Enable the People of Oklahoma and the Indian Territory to form a Constitutional and State Government and be admitted into the Union on an equal footing with the original states; and to enable the people of New Mexico and Arizona to form a constitution and State Government and be admitted into the Union on an equal footing with the original states.' Approved June the sixteenth, Anno Domino, nineteen hundred and six."

9. And that the said Constitutional Convention did adopt and the people thereafter ratified the said Constitution by accepting all grants of land and donations made to the said proposed state by the United States under the Enabling Act for the uses and purposes and particularly Section one of Article eleven of said Constitution, in the following language, to wit:

"The state hereby accepts all grants of land and donations of money made by the United States under the provisions of the Enabling Act, and any other Acts of Congress, for the uses and purposes and upon the conditions, and under the limitations for which the same are granted or donated; and the faith of the state is hereby pledged to preserve such lands and moneys and all moneys derived from the sale of any of said lands as a sacred trust, and to keep the same for the uses and purposes for which they were granted or donated."

10. The defendants further allege that under and by virtue of the Act of Congress approved May 4, 1894, the Rules and Regulations adopted by the Secretary of the Interior, the Honorable Thomas B. Ferguson, Governor, and William Grimes as Secretary, and L. W. Baxter as Superintendent of Public Instructions, all of the Territory of Oklahoma, constituting the Board for leasing land reserved for school and public buildings in the Territory of Oklahoma, did make and enter into a certain lease contract with one William T. Click on the 8th day of January, 1902, covering the Northeast Quarter of Section Thirty-three (33), Township One (1) South, Range Eight (8) West, and covering a period of time from the first day of January, 1902, to the first day of January, 1905; a copy of said lease contract is hereto attached, made a part hereof and marked defendant's "Exhibit A."

11. That thereafter, on the first day of January, 1905, the Honorable Thomas B. Ferguson, as Governor, William Grimes as Secretary, and L. W. Baxter as Superintendent of Public Instructions, all of the Territory of Oklahoma, as the Board for leasing reserved lands for schools, public buildings and other purposes, for the Territory of Oklahoma, did make, and enter into a certain contract in writing with the said William T. Click under and by virtue of the authority of the Act of Congress approved May 4, 1894, and the regulations of the Secretary of the Interior, whereby they leased to the said Click the said Northeast Quarter ($\frac{1}{4}$) of Section Thirty-three (33), Township One (1) South, Range Eight (8) West, from the first day of January, 1905, to the first day of January, 1908, the said lease being executed on the first day of January, 1905, and on the 12th day of April, 1905, by the respective parties. Copy of said lease is hereto attached, marked "Exhibit B" and made a part hereof.

12. That the said William T. Click entered into possession of the said lands at the time of the execution of said first lease and remained in possession of said land during all the time, and was entitled to, and qualified to receive the benefits of all legislation enacted by the proper authorities concerning said lands. And that upon the passing of the Enabling Act, approved June 16, 1906, the said William T. Click was vested with the Preference Right to purchase at the highest bid without limitation or conditions, the lands hereinafter described, and that upon the adoption of the Constitution, the people of the State of Oklahoma, recognized, and accepted in interest, the Preference Right of purchase of the lands then held by him under lease, at the highest bid.

13. That thereafter, and on the 18th day of July, 1908, the State of Oklahoma, acting by and through the Honorable C. N. Haskell, Governor and Chairman of the Commissioners of the Land Office of the State of Oklahoma; the Honorable L. D. Marr, Secretary of the Land Office of the State of Oklahoma, pursuant to House Bill No. 414, passed by the Legislature of the State of Oklahoma, during its session of 1907-1908, and approved by the Governor, did grant and convey to the said William T. Click an extension certificate extending said lease, "Exhibit B," to the first day of January, 1909, and that the said extension was accepted by the said William T. Click, all as appears by copy of said certificate hereto attached, marked "Exhibit C," and made a part hereof.

14. Defendants further allege that during the term of said extension certificate, "Exhibit C," said William T. Click did sell, transfer, grant and convey his right, title and interest, including the Preference Right of purchase of said lands, to one L. B. DeArman, and that in recognition of the rights of the said L. B. DeArman, and pursuant to the request of the said William T. Click and of the said L. B. DeArman, and as evidence of the rights of L. B. DeArman to the land in question under the lease as aforesaid, the Honorable Board of Commissioners of the Land Office of the State of Oklahoma, acting by and through Honorable Ed. Cassidy, Secretary of said Board, did make, execute and deliver to the said L. B. DeArman an extension certificate evidencing his right in said land which showed said lease, "Exhibit C," to be extended in the name of L. B. DeArman to the first day of January,

1909, copy of said Extension Certificate is hereto attached, made a part hereof and marked "Exhibit D."

15. That pursuant to said transfer from the said William T. Click to the said L. B. DeArman, the said L. B. DeArman became vested with all the right, title and interest under and by virtue of the lease therefor granted by the state to the said William T. Click and under and by virtue of the Enabling Act and the Constitution of the State of Oklahoma, and covering said lands.

16. That thereafter the State of Oklahoma, acting through the Board of Commissioners of the Land Office of the State of Oklahoma, acting under and by virtue of their authority under the law, did make and execute an extension certificate to the said L. B. DeArman, extending the lease to the said L. B. DeArman to the first day of January, 1910. Copy of said Extension Certificate is hereto attached, made a part hereof and marked "Exhibit E."

17. Defendants further allege that on or about the 15th day of October, 1909, the said L. B. DeArman and his wife, Emma DeArman, for valuable consideration, did execute a conveyance of their right, title and interest as lessee to said land to the defendant, William T. Price, upon condition that a good and sufficient lease to said land be executed by the said School Board to the said William T. Price, and caused the same to be filed of record in the office of the Board of Commissioners of the Land Office of the State of Oklahoma. That during the time said L. B. DeArman held the lease on said lands hereinabove described, he occupied said lands and improved the same, and in all respects complied with the laws affecting his right under said lease and to said lands. A copy of said conveyance is hereto attached, made a part hereof and marked "Exhibit F."

Immediately thereafter the said William T. Price and his wife, Ora Price, went into possession of said lands and have at all times since occupied said lands as their homestead and that the said William T. Price was at all times a qualified person to hold a lease upon said lands and to purchase said land under the preference right.

18. That the said defendants, William T. Price and his wife, Ora Price, occupied said lands from the date of said relinquishment until on or about the first day of January, 1913, without any further instrument in writing being exe-

ected between the said Commissioners of the Land Office of the State of Oklahoma and said William T. Price, but that during said time said defendants paid rentals on said land and that the said Commissioners of the Land Office accepted the same and recognized the right of said William T. Price and Ora Price to said land, and the said defendants and their predecessors paid the taxes assessed against said lands from year to year by the State and its various municipalities.

19. That on or about the second day of January, 1913, the State of Oklahoma, acting by the Commissioners of the Land Office of the State of Oklahoma, composed of the Honorable Lee Cruce, Governor of the State of Oklahoma and Chairman of said Board, and J. R. Williams, Secretary of said Board, executed a purported lease in writing to William T. Price, covering a period of time from the first day of January, 1913, to and including the 31st day of December, 1914.

20. That thereafter and on or about the 5th day of March, 1915, the said Commissioners of the Land Office of the State of Oklahoma acting by and through their Secretary, the Honorable G. A. Smith, did make, execute and deliver to the said William T. Price a purported Extension Certificate extending the time of said lease from the 31st day of December, 1914, to and including the 31st day of December, 1915.

21. Defendants further allege that at the time of the passage of the Enabling Act and approval thereof, to wit, on June 16, 1906, and at the time of the adoption of the Constitution of the State of Oklahoma, and for more than ten years thereafter, the said lands hereinbefore described were not known or classed as mineral lands.

22. *Plaintiff* further alleges that by virtue of the provisions of Section 1 of Article 4 of Chapter 49 of the Acts of the Legislature for the Session of 1907-1908, and other acts, the Commissioners of the Land Office of the State were required to set aside such lands as were known to be mineral in character, and to segregate the minerals from the surface use and interest therein.

Said defendants allege and state that said acts if applied so as to segregate the minerals including oil and gas in the lands hereinbefore described so as to deprive the defendants of their Preference Right to purchase said land and all there-

of, would be unconstitutional and void as to them insofar as it attempts to take away from these defendants such Preference Right to purchase said interest. And would be violating the provisions of the Constitution of the United States of America in depriving these defendants of their property without due course of law. That said Section 1 reads as follows:

"When any tract of the school land and other public lands granted to the State of Oklahoma under the Act of Congress known as the 'Enabling Act' is, by the Commissioners of the Land Office of the State, known to contain oil or gas, or where such lands are, by said Commissioners, deemed valuable for oil and gas purposes, such Commissioners shall enter of record in their office, their finding declaring that such oil or gas character exist, and further declaring that the oil and gas deposits are segregated from the surface use and interest therein, and such segregation of such deposits shall conclusively withhold the same from sale, lease or other alienation, except as provided in this Act."

23. That under and by virtue of Article 2 of Section 28 of the Laws of the State of Oklahoma for the year 1909, approved March 2, 1909, the Commissioners of the Land Office of the State of Oklahoma, were directed by the Legislature to dispose of, sell and convey the lands known as indemnity lands in the State of Oklahoma, and Section 33.

24. That acting under the provisions of law, said Commissioners of the Land Office did cause the lands hereinbefore described, together with the other lands in said section and in said vicinity to be appraised according to the terms and requirements of the Enabling Act for sale purposes and the lands hereinbefore described were appraised by three disinterested appraisers, non-residents of the county in which said lands are located, at the sum of _____ dollars, and the improvements were appraised at the sum of _____ dollars.

Defendants further allege that under and by virtue of said appraisement so made, the said Commissioners of the Land Office did advertise and sell the other three quarter sections in said section thirty-three (33) and certain indemnity lands in section thirty-four (34), in the said township and range, and other lands located in the vicinity of the lands in controversy, but wholly failed and neglected to offer for sale the

lands of these defendants, although required by law to do so.

25. Defendants further allege that at the time of said appraisement the defendants and their predecessors had improved said lands by reducing the same to a high state of cultivation, fencing the same, building a house and barn thereon, setting out and cultivating for a period of four years an orchard of something over four hundred trees and were occupying said lands at said time as they had been therefore as their homestead and with the intention of making said lands their home.

26. Defendants further allege that in disregard of the right of the defendants the said Commissioners although directed so to do by the Legislature of the State of Oklahoma, failed and neglected since 1909, to cause said lands to be advertised and sold as required thereby and that the defendants have at all times been ready, willing and able to do all things required of them by the Enabling Act in order to prove their title to said lands, and that the Commissioners of the Land Office of the State of Oklahoma, in disregard of the right of these defendants under their said lease, and their right to exercise their privilege of buying said land at the highest bid therefor, did on or about the 4th day of January, 1919, make, execute and deliver to the Magnolia Petroleum Company certain oil and gas mining lease which is attached to and made a part of the plaintiff's Amended Petition; said lease was made to the said Magnolia Petroleum Company without any knowledge or consent upon the part of these defendants, or either of them, and without any cancellation or other disposition of the leasehold by the defendants herein on said lands, and without giving to these defendants any preference right to purchase a lease for oil and gas purposes. That the effect of the giving of said lease and development of said land under said lease for oil and gas purposes would be to denude said lands of a very material part of their value, to deprive defendants of the possession of said lands, the use and occupancy thereof and if said plaintiff is permitted to operate under said lease and to drill and operate wells upon said land to the exclusion of the defendants, it would deprive defendants of their preference right to purchase said lands, and will make said land valueless for any purpose except under such oil and gas lease so executed to the plaintiff.

27. That the defendants have valuable rights in and to said lands under their preference right to purchase the same, and under and by virtue of their right to the use and occupancy of the same, and that the making of said lease deprives these defendants of all of said rights without compensation and in violation of the due process under the Constitution of the State of Oklahoma and the Constitution of the United States of America.

28. Defendants further allege that the Resolution set out in paragraph 3 of Plaintiff's Amended Petition as having been passed by the Commissioners of the Land Office of the State of Oklahoma, was made without authority of law, and is of no force and effect. That said Resolution was passed without the knowledge of the defendants or either of them, and without any compensation being allowed defendants for their rights and claims in and to the said lands, and such purported action by the said Board was in direct violation of the instructions and directions made to said Board by law, and by the State of Oklahoma, with respect to the sale and disposition of said lands involved and claimed by defendants. That said resolution deprives defendants of their property without due process of law guaranteed to them under the Constitution of the State and of the United States and impairs and deprives them of the rights granted to them under the Enabling Act.

29. Defendants further allege that any and all acts of said Board of School Land Commissioners and any and all acts of the Legislature that deprives these defendants or either of them from their Preference Right to purchase said lands, or of their rights in said lands as a homestead, does so without compensation and without due process of law.

30. Defendants further deny that the purported oil and gas lease granted plaintiff gives it any rights to the possession of said lands, or any part thereof, and that the purported action of said Board is in direct violation of their duty under the law of which the plaintiff herein is charged with notice and deprived these defendants of their rights in and to said lands guaranteed them under and by virtue of the Constitution of the State of Oklahoma and of the United States.

31. Defendants further allege that at the time of the delivery of the lease and the Extension Certificate thereto, marked "Exhibit A" and "Exhibit C," and attached to plaintiff's Amended Petition, defendants did not thereby surren-

der their Preference Right to purchase said lands, or the homestead character of said lands. That the consideration named in said lease was the rental value of the lands at said time, and no amount was by defendants received as a consideration for the release by defendants of their Preference Right to purchase said lands, and defendants have consistently maintained and claimed their Preference Rights to said lands, and have at all times done all things required by them by law, to hold and perfect their title thereto, and have in good faith at all times maintained their residence as a home thereon, with their family, and cultivated the said lands and built and maintained the permanent improvements thereon. Defendants and each of them have at all times since their purchase of the said rights of the said DeArman to said lands claimed and asserted their Preference Rights to purchase said lands and their homestead rights thereto, and have never at any time surrendered, eliminated, waived or abandoned their said Preference Right to purchase said lands, or their homestead in said lands.

33. Defendants further allege that Section 3, Article IV, Chapter 49, Session Laws 1907-08, is in violation of the provisions of the Enabling Act and of Section 1, Article 11, of the Constitution, accepting the grants of public land by the United States to the State of Oklahoma, in that it attempts to authorize the leasing of all public lands granted to the state without regard to the time of such lease, and for terms in excess of the period fixed by Section 8 of the Enabling Act, and that the oil and gas lease held by the plaintiff was made in violation of the terms of the Enabling Act accepted by the State Constitution, and in violation of the authority given, or attempted to be given by said Section 3, Article IV, Chapter 49, Session Laws 1907-08, if said section be held valid in itself. And said Section 3 and the act of the said Commissioners in executing said pretended lease to plaintiff, if upheld and enforced, violates the Fourteenth Amendment of the Constitution of the United States as to defendants in that it takes and will have the effect of taking defendants' property without compensation and without due process of law.

34. Defendants further allege that Articles III and IV of Chap. 49, Session Laws 1907-08, approved May 26, 1908, together with the revision of said Statutes as found and con-

tained in Article III and IV, Chap. 69, Revised Laws 1910, and all acts amendatory of such original or revised statutes, or which, whether in the form of a revision or amendment, or by new enactment, undertakes to segregate the mineral or oil and gas deposits from the surface uses and interests in Section 33, granted to the State of Oklahoma, by the terms of the Enabling Act, and accepted by Section 1 of Article 1 of the Constitution, for the uses and purposes and upon the conditions, and under the limitations therein contained, and which statutes, or any rule or regulation attempted to be made pursuant thereto, undertake to confer power upon, or to authorize the Commissioners of the Land Office to segregate the minerals, oil and gas deposits on or under such lands from the surface uses and interests therein, and all acts done by the said Commissioners of the Land Office and their officers, agents and employees, or any other officers, agents and employees of the State, acting under or pursuant to such statute, or any purported rules or regulations of such Board of Commissioners, or under color of authority of any statute, rule or regulation and particularly of any statute, rule or regulation, or action of the Commissioners of the Land Office in attempting, on August 26, 1915, as charged in plaintiff's Amended Petition, to declare the land theretofore leased to the defendant, William T. Price, to be valuable for oil and gas purposes and to segregate the oil and gas deposits belonging thereto and forming a part of such lands in their native state, from the surface uses and interest therein, and withdraw the same from sale, as well as to authorize the leasing of such lands, already leased, for oil and gas purposes, and in making and entering into the lease of January 4, 1919, with plaintiff, and through which it claims the right of entry and title to the oil and gas on the lands theretofore leased to defendant as construed and as applied to William T. Price, and the lands to which he was, by law, given the Preference Right of purchase, is repugnant to and violates not only Sections 2, 7, 15 and 23 of Article 11 of the Constitution of the State of Oklahoma, but the Fourteenth Amendment to the Constitution of the United States, in that such statute and all acts done pursuant thereto, or under color of authority thereof, as construed and applied to defendants deprives the defendants of liberty and property without due process of law

and without compensation, and denies to the defendants the equal protection of the laws.

35. And defendants claim the protection of the Constitution of the United States and the Amendments thereto, and particularly the Fourteenth Amendment, and invokes the vested jurisdiction of the Court, and, in due course, of the Supreme Court of Oklahoma, and if necessary, ultimately of the Courts of the United States, for protection of the rights of said defendants and each of them and of their liberty and property in the northeast quarter ($\frac{1}{4}$) of section thirty-three (33), township one (1) south, range eight (8) west, in Stephens County, and of their equal protection of the laws, and for due process of law.

36. Wherefore, defendants pray judgment and ask that plaintiff take nothing by its suit, and that defendants recover their costs.

THIRD COUNT.

Comes now the defendants and for affirmative relief and as their cause of action against the plaintiff, allege and state:

1. Defendants re-allege all the facts and things pleaded in each paragraph of the second count of this answer and refer to them and make them a part hereof the same as if set out and copied in full in this count.

2. Defendants further allege that the plaintiff claiming under the oil and gas lease attached to its Amended Petition filed this suit and without notice obtained a temporary restraining order against these defendants from the County Judge of Stephens County, Oklahoma, enjoining these defendants from interfering with plaintiff going upon said lands and drilling for and producing oil and gas on said lands. That under said oil and gas lease and with the protection of said restraining order the plaintiff with a large force of men, teams and equipment, came upon said lands and have been continuously coming unto said lands since said order was issued and are continually trespassing on said lands without regard to the defendants' rights, and if said plaintiff is permitted to continue trespassing on said lands they will entirely destroy said lands for any purpose except for the production of oil and gas under plaintiff's purported lease.

3. That since the issuance of said restraining order the plaintiff has drilled on said lands four oil wells which have

and are producing large amounts of oil and gas, the amount thereof being unknown to these defendants, but said defendants allege that said wells have been and are producing 500 barrels each day and that ever since the said wells were brought in, the plaintiff has been appropriating said oil and gas to its own use and has in no manner accounted to defendants therefor.

4. Defendants further allege that the plaintiff has and will continue to mingle said funds derived from said oil and gas with other funds of plaintiff and use the same in payment of its obligations, and dividends to its stockholders, many of whom are not residents of Oklahoma, and has and will continue to pay to the State of Oklahoma fixed royalties as in said lease provided and thereby place said funds and moneys beyond the reach of defendants, and will place all the proceeds from said oil and gas beyond the jurisdiction of this Court.

5. Defendants further ask and demand by reason of these facts, and by reason of the claim of these defendants to these lands, hereinbefore set forth, that the plaintiff account to them for all minerals, oil and gas taken from said lands and pending the final determination of this cause that a receiver be appointed to take charge of said wells on said lands and operate them and hold the proceeds thereof until this cause is finally adjudicated under the control and direction of the court having jurisdiction of this cause, and that plaintiff be enjoined from disbursing said funds and payment of royalties under said lease.

6. Defendants further allege that said oil and gas lease so executed to plaintiff casts a cloud upon the title to said lands and upon the rights of these defendants and each of them in and to the same, and that said lease should be, and defendants ask that it shall be, cancelled and held null and void and of no force and effect.

Wherefore, defendants pray judgment and ask that plaintiff take nothing by its suit, and that defendants recover their cost.

Defendants further ask that the plaintiff's oil and gas lease of date January 4, 1919, be cancelled, set aside and held for naught; that the plaintiff be enjoined from the payment or distribution of the proceeds of any oil or gas extracted or taken from the lands in controversy that may be now in their hands or that may come into their hands hereafter.

That said plaintiffs be required by the judgment of this court to render an accounting for all minerals, oil and gas, extracted or taken from said lands since the date of their entry thereon until the final determination of this cause. That upon presentation to the court that the court render judgment, appoint a receiver to take charge of the wells now on the lands in controversy and operate the same under the direction and control of the court having jurisdiction of this cause.

That defendants be adjudged to have the Preference Right of purchase of said lands and that the defendants and each of them be adjudged to have a homestead interest in said land; and

The defendants pray the judgment of the court for such further and other relief as may to the court seem just and equitable in the premises, and that the defendants recover their costs in this behalf expended.

STEVENS & RICHARDSON,
BLAKE & BOYS,
STUART, SHARP & CRUCE,
Attorneys for Defendants.

STATE OF OKLAHOMA,
Oklahoma County, ss:

I, -----, being first duly sworn, depose and say that I am one of the defendants in the above entitled cause, that I have read the above and foregoing answer and that the facts therein stated are true.

Subscribed and sworn to before me this-----day of
-----1920.

Notary Public.

“EXHIBIT A”

Renewal of Lease—School Land—for 16 and 36 and 13 and 33.

This Indenture, made by and between Thompson B. Ferguson, as Governor, William Grimes, as Secretary, and L. W. Baxter, as Superintendent of Public Instructions, of the Territory of Oklahoma, constituting a board for leasing land re-

served for schools and public buildings in the Territory of Oklahoma, parties of the first part, and William T. Click, party of the second part, witnesseth: That the said parties of the first part, by virtue of the authority vested in them by Act of Congress approved May 4, 1894, and the regulations prescribed by the Secretary of the Interior, therein provided for, and in consideration of the covenants of the said party of the second part hereinafter set forth, have this day lease, to the said party of the second part, the following described school land, to wit: The NE of Section 33, Township 1 S., North of Range 8 W. of the Indian Meridian, in Comanche County, Oklahoma Territory, to have and to hold the same for a term of three years from the first day of January, 1902, to the first day of January, 1905, for which said party of the second part hereby agrees to pay therefor the sum of----- dollars, cash in hand, the receipt whereof is hereby acknowledged, and twenty-five dollars on the 1st day of October, 1902, and twenty-five dollars on the 1st day of October, 1903, and twenty-five dollars on the 1st day of October, 1904.

The said deferred payments are evidenced by three certain joint, several promissory notes of even date herewith, signed by said party of the second part and two sureties for the above amount, due and payable at the time set forth.

The said party of the second part covenants with the said parties of the first part, that he will not cut or remove or permit to be cut or removed any timber from said land; that he will not quarry or remove, or permit to be quarried or removed, any building or other stone from said land, except such as may be necessary for the foundation for buildings thereon; that he will not mine or remove, or permit to be mined or removed, any minerals therefrom, that he is leasing said lands for agricultural purposes and grazing purposes, and that he will cultivate the same in a husbandlike manner; that he will not assign this lease, or underlet any portion of the leased premises, and that he will not commit any acts of waste upon or to said land.

It is further agreed by and between the parties to this lease that the said party of the second part may, at the expiration of the time for which this lease is made, remove any or all of the improvements he may have placed upon said land, unless the said party of the second part shall be in default

for payment of said rental, or a part thereof, or has violated any of the conditions herein.

If default is made in the payment of the said rental, or the conditions of this lease have been violated, the improvements upon said land, and the growing crops thereon, shall not be removed by the said party of the second part, or any one claiming under him, until such rental has been fully paid, together with interest, costs, damages, and attorney's fees arising from the violation of the conditions of this lease, and such unpaid rental, interest, costs, damages and attorney's fees aforesaid, shall become a lien upon the improvements or growing crops on said land, and the improvements or growing crops may be sold at public or private sale by the said parties of the first part, or their successors in office, without notice to the said party of the second part, and the proceeds of such sale applied to the satisfaction of the unpaid part of said rental, and in satisfaction of damages, interest, costs, and attorney's fees as aforesaid.

It is hereby expressly understood by and between the parties to this lease that upon the non-payment of said rentals or any part thereof at the time the same shall become due and payable, or upon the failure or refusal of the said party of the second part to furnish additional security for any deferred payments, when requested so to do, by the said parties of the first part, or their successors in office, or if the said party of the second part shall fail in any manner to comply with the provisions of this lease, or violate any of the conditions thereof, the said parties of the first part or their successors in office, may, at their option, declare this lease forfeited, and the said parties of the first part or any other person, lawfully entitled to the possession thereof on behalf of, or representing the United States, or the Territory of Oklahoma, shall have the right to take immediate and peaceable possession of said premises, together with the improvements and growing crops thereon situated. And upon the termination of this lease, either by the expiration of the time for which the lease is made, or by reason of the violation of any of the conditions hereinbefore set forth, any instrument in writing, signed by the said parties of the first part, or their successors in office, showing that the person or officer named therein is entitled to the possession of the land or that he takes pos-

session of the improvements and growing crops thereon on behalf of the United States or the Territory of Oklahoma, shall be sufficient authority for such person or officer to take possession of the land, and to take possession of, and sell the improvements and growing crops thereon, for the purpose of paying any part of said rental due and unpaid, with interest, costs, damages and attorney's fees, as hereinbefore provided for.

If the party of the second part desires to re-lease said land at the expiration of the time for which this lease is made and files his application therefor with the said parties of the first part, or their successors in office, when ever PUBLIC NOTICE is given that the bids will be received, and has complied with all the conditions herein, he will be given a preference right to re-lease said land at the appraised rental value thereof as fixed by the Board of Leasing School Lands, but the right is reserved by the said parties of the first part to reject all bids.

If, at any time after the execution of this lease, it is shown to the satisfaction of the parties of the first part, or their successors in office, that there has been any fraud or collusion upon the part of the party of the second part to obtain this lease at a less rental than its value, it shall be null and void at the option of the parties of the first part.

Executed in duplicate.

Witness the hands and seals of the parties aforesaid this 8th day of June, '02.

T. B. FERGUSON,
Governor.

[SEAL]

WILLIAM GRIMES,
Secretary.

[SEAL]

L. W. BAXTER,
Superintendent of Public Instruction.

Witness: J. R. Gates, Jr., W. R. Green. Endorsed: Lease No. 21053.

Lease: From Thompson B. Ferguson, Gov., William Grimes, Secretary, L. W. Baxter, Superintendent of Public Instruction. To: William T. Click, P. O. Comanche. Expires: January 1, 1905. Application No. 16719. T. G. Payment No. \$2.00, Cash payment No. 115, \$105.00. Excess.

EXHIBIT "B"

Lease for Territorial School Land

This indenture, made by and between Thompson B. Ferguson, as governor, William Grimes, as Secretary, and L. W. Baxter, as Superintendent of Public Instructions of the Territory of Oklahoma, and constituting a board for the leasing of land reserved for schools, public buildings and other purposes, in the Territory of Oklahoma, parties of the first part, and Wm. T. Click, party of the second part, Witnesseth:

That the said parties of the first part, by virtue of the authority vested in them by an act of Congress approved May 4, 1894, and the regulations prescribed by the Secretary of the Interior, therein provided, for, and in consideration of the covenants of the said party of the second part hereinafter set forth, have this day leased to the said party of the second part the following described school or other reserved land to wit:

The NE $\frac{1}{4}$ of Section 33, Township 1 South of Range 8 West of the Indian Meridian in Comanche County, Oklahoma Territory, to have and to hold the same for a term of three years from the First day of January, 1905, to the First day of January, 1908, for which said party of the second part hereby agrees to pay therefor the sum of-----Dollars, cash in hand, the receipt whereof is hereby acknowledged, and Forty six dollars on the first day of October, 1905, and Forty six dollars on the first day of October, 1906, and Forty six dollars on the first day of October, 1907.

That said deferred payments are evidenced by 3 certain joint, several promissory notes of even date herewith, signed by said party of the second part and two sureties for the above amount, due and payable at the time above set forth.

The said party of the second part covenants with the said parties of the first part, that he will not cut or remove, or permit to be cut or removed, any timber from said land; that he will not quarry or remove, or permit to be quarried or removed, any building or other stone from said land, except such as may be necessary for the foundations for buildings thereon; that he will not mine or remove, or permit to be mined or removed, any minerals therefrom; that he will cultivate the same in a husbandlike manner; that he will not assign this

lease, or underlet any portion of the leased premises (without a permit) and that he will not commit any acts of waste upon or to said land.

It is further agreed, by and between the parties to this lease that the party of the second part may at the expiration of the time for which this lease is made, remove any or all of the improvements he may have placed upon said land, unless the said party of the second part shall be in default for payment of said rental, or any part thereof, or has violated any of the conditions herein.

If default is made in the payment of said rental, or the conditions of this lease have been violated, the improvements upon said land, and the growing crops thereon shall not be removed by the party of the second part, or any one claiming under him, until such rental has been fully paid, together with interest, costs, damages, and attorney's fees aforesaid, and shall become a lien upon the improvements on said land and the growing crops thereon, and such improvements and growing crops may be sold at public or private sale by said parties of the first part, or their successors in office, without notice to the said party of the second part, and the proceeds of such sale applied to the satisfaction of damages, interest, costs, and attorney's fees as aforesaid.

It is hereby expressly understood by and between the parties to this lease, that upon the non-payment of said rental or any part thereof at the time the same shall become due and payable, or upon the failure or refusal of the said party of the second part to furnish additional security for any deferred payments when requested so to do by the said parties of the first part, or their successors in office, or if the said party of the second part shall fail in any manner to comply with the provisions of this lease, or shall violate any of the conditions thereof, the said parties of the first part, or their successors in office, may at their option, declare this lease forfeited, and the said parties of the first part and any other person lawfully entitled to the possession thereof on behalf of, or representing the United States, or the Territory of Oklahoma, shall have the right to take immediate possession of said premises, together with the improvements and growing crops thereon situated, and upon the termination of this lease, either by the expiration of

the time for which this lease is made, or by reason of the violation of any of the conditions hereinbefore set forth, any instrument in writing, signed by the said parties of the first part, or their successors in office, showing that the person or officer named therein is entitled to the possession of the land, or that he takes possession of the improvements or growing crops thereon, on behalf of the United States or the Territory of Oklahoma, shall be sufficient authority for such person or officer to take possession of the land, and to take possession of and sell the improvements and growing crops thereon, for the purpose of paying any part of said rental due and unpaid, with interest, costs, damages and attorney's fees, as hereinbefore provided for.

If the party of the second part desires to release said land at the expiration of the time for which this lease is made and files his application therefore with the said parties of the first part, or their successors in office, whenever PUBLIC NOTICE is given that the bids will be received, and has complied with all the conditions herein he will be given a preference right to re-lease said land at the appraised rental value thereof as fixed by the board for leasing School lands, but the right is reserved by the said parties of the first part to reject all bids.

If, at any time after the execution of this lease, it is shown to the satisfaction of the parties of the first part, or their successors in office, that there has been any fraud or collusion upon the part of the said party of the second part to obtain this lease at a less rental value than its value, it shall be null and void at the option of the parties of the first part.

Executed in duplicate.

Witness the hands and seals of the parties aforesaid this 1st day of January, 1905.

Attest to signatures of Members of the Board:

T. B. FERGUSON,

Governor.

WILLIAM GRIMES,

Secretary.

L. W. BAXTER,

WM. T. CLICK,

Lessee.

FRED WENNER,

Secretary of the Board.

[SEAL]

[SEAL]

[SEAL]

Before me on this 12th day of April, 1905, personally appeared Wm. T. Click, who executed the within and foregoing instrument as his free and voluntary act and deed.

Subscribed and sworn to before me the above day and date.

W. H. ADAMS, *Notary Public*.

My Commission expires Nov. 19, 1907.

Endorsed: Lease No. 34911. Lease: from Thompson B. Ferguson, Governor, William Grimes, Secretary, L. W. Baxter, Supt. of Public Instruction, to Wm. Click, P. O. Comanche, I. T. Expires January 1, 1908. Application No. 26212. T. C. Payment No. ——— \$2.00, Cash Payment No. ——— \$ ———.

EXHIBIT "C"

EXTENSION CERTIFICATE

Renewal of Lease

Whereas, on the 1st day of January, 1905, the Territorial Board of Leasing School Lands executed a lease to Wm. T. Click, for the following described lands, situated in Stevens County, to wit:

NE 33-18-8W.

said lease expiring on the 1st day of January, 1908, and said lessee did make application and is entitled to a renewal thereof, and

Whereas, the Legislature of the State of Oklahoma, passed an act known as House Bill No. 414, which provides that all leases upon school lands expiring between December 25th, 1907, and April 15th, 1908, are extended without further action of the Commissioners of the Land Office of the State of Oklahoma, until January 1st, 1909.

This, then, certified that the said lease above described is hereby extended to the first day of January, 1909, and a consideration for the extension thereof, and as rent for the said described lands for the said period the said lessee binds and obligates himself to pay to the State of Oklahoma the sum of forty-six (\$46.00) dollars in the following manner:

Cash in hand, receipt of which is hereby acknowledged.

One certain promissory note of this date, executed by said lessee as principal and two persons, residents of said State as sureties.

In witness whereof, the said Commissioners of the Land Office have caused this certificate of extension to be executed in duplicate by C. N. Haskell, Governor of the State of Oklahoma, as Chairman of the Commissioners of the Land Office, and attested by L. D. Marr, Secretary to the Commissioners of the Land Office, this 18th day of July, 1908.

C. N. HASKELL,
Governor and Chairman of the Commissioners of the Land Office.

Attest:

L. D. MARR,
Secretary to the Commissioners of the Land Office.

I, W. T. Click, the above nemed lessee, do hereby accept such extension under the conditions above stated.

In witness whereof, I have hereunto affixed my signature on this 20th day of July, 1908.

W. T. CLICK, *Lessee.*

Witnesses to signature: Geo. T. Burk, E. R. Lambdin.

Endorsed:

No. 51119. Extension Certificate. Renewal of Lease. From the Commissioners of the Land Office, State of Oklahoma, to Wm. T. Click, Postoffice, Comanche, No. 3.

Expires January 1st, 1909. Application No. 37431. T. C. payment No. ———\$1.00. Cash payment No. ———\$———.

EXHIBIT "D"

Guthrie, Okla., 1-1-1905.

This is to certify that the lease executed by the Territorial Board of the Territory of Oklahoma for Leasing School Lands, as lessor, and Wm. T. Click, of _____lessee, upon the following described land, to wit, NE $\frac{1}{4}$, Sec. 33-18-8W, Stephens and which lease expires on January 1, 1908, is extended to the first day of January, 1909, without further action, under Chapter 49, Article 2, Laws of 1907-08, which provides as follows:

Sec. 1. "All leases expiring between December 25, 1907, and April 15, 1908, are extended without further act of the Commissioners of the Land Office until January 1st, 1909, in all cases where lessees desire extension * * * *

and that on the 18th day of Aug., 1908, said lessee relin-

quished his interest in and to said lease and lands to L. B. DeArman, Duncan.

And that on the ____ day of _____ 19____, said _____
_____relinquished his interest in and to said lease and lands
to _____.

And that said last named person is the lessee of said land.

In witness whereof, I have hereunto affixed my official
signature this 31st day of December, 1908.

ED. CASSIDY,

*Secretary to the Commissioners of the Land
Office of the State of Oklahoma.*

N. B. Lessee can transfer or assign his lease by surrendering the duplicate lease which expired January 1st, 1908, and this certificate accompanied by the proper remittance. In the event that the duplicate lease has been surrendered on a previous transfer, lessee can transfer or assign by the surrender of this certificate.

EXHIBIT "E"

Extension Certificate

Whereas, on the 1st day of Sept., 1908, the proper authorities having charge of the leasing of the school lands now belonging to the State of Oklahoma, entered into a written lease with L. B. DeArman, for the following described lands situate in Stephens County, to wit:

NE $\frac{1}{4}$ Sec. 33-1S-8W

Whereas, under and by virtue of the terms thereof and the laws of the State of Oklahoma, said lease expired on the first day of January, 1909, and,

Whereas, it is provided under the terms of said lease that the said lessee has the non-competitive preference right to renew the same subject to the laws of the State of Oklahoma, and,

Whereas, on the 30th day of April, 1909, the Commissioners of the Land Office of the State of Oklahoma, who have, under and by virtue of the Constitution of the said State, charge of the sale, rental, disposal and management of the school lands and other public lands thereof, did by Resolution, properly adopted direct the Secretary to said Commission to proceed to collect rents for the school lands of the State for the current year on the same basis as the last preceding year.

This, then, is to certify that the said lease above described is hereby extended to the first day of January, 1910, such extension being made subject to all the laws of the State of Oklahoma, which are now or may hereafter become in force or effect or which may hereafter be passed, and as a consideration for this extension and as rent for said described land for the period beginning on January 1st, 1909, and ending upon the 31st day of December, 1909, the said lessee binds and obligates himself to pay to the Commissioners of the Land Office of the State of Oklahoma, the sum of forty-six dollars in the following manner:

One certain promissory note of this date executed by said lessee as principal, and two persons, resident of said state, as sureties.

This certificate is issued in duplicate.

In witness whereof, I have hereunto affixed my official signature as the duly acting and qualified Secretary to the Commissioners of the Land Office of the State of Oklahoma, at the City of Guthrie, in said State, on this day of May 12, 1909.

ED. CASSIDY,

*Secretary to the Commissioners of the Land
Office of the State of Oklahoma.*

I, L. B. DeArman, the above named lessee, do hereby accept such extension under the terms and conditions of the lease above stated.

In witness whereof, I have hereunto affixed my signature this 17th day of June, 1909.

L. B. DeARMAN.

Witnesses to signature, H. F. Dunn, T. N. Moody.

Endorsed: T-20783. No. 57667. Extension Certificate from Commissioners of the Land Office of the State of Oklahoma, to L. B. DeArman, postoffice, Duncan. Expires December 31, 1909. Application No. 38548. T. C. Payment No. ————\$2.00. Cash payment No. ————\$———.

EXHIBIT "F"

Relinquishment.

I, L. B. DeArman, being the lessee under a lease from the Board of Leasing School Lands, and which lease covers the

following described land, to wit, the Northeast Quarter Section No. 33, Township One South of Range Eight West.

Do hereby relinquish all my right, title and interest under said lease to the land above particularly described, to the Board for Leasing School Lands, upon the condition that a good and sufficient lease to this land be executed to William T. Price, a qualified lessee, being the head of a family whose postoffice address is Comanche, Okla.

And being duly sworn, upon my oath declare that no timber has been cut upon, nor any rock, sand or mineral removed from the said land during the term of my lease without a permit from the Board for Leasing School Lands and for which the State has not been paid for.

L. B. DeARMAN, *Lessee*.

Subscribed and sworn to before me this 15th day of October, A. D. 1909.

R. E. CAMPBELL, *Notary Public*.

My Commission expires Dec. 29, 1912.

I, Emma DeArman, wife of L. B. DeArman, the lessee of the Northeast Quarter of Section 33, Twp. One South of Range 8 West, hereby concur in the above relinquishment, waiving all my rights in said lease.

EMMA DeARMAN.

STATE OF TEXAS,

County of Baylor.

On this 18th day of October, 1909, personally appeared before me, Emma DeArman, known to me to be the wife of L. B. DeArman, and the identical person who signed the above instrument and acknowledged to me the execution of the same to be her voluntary act and deed for the purposes therein set forth.

D. L. KENAN.

My Commission expires June 1st, 1911.

Endorsed: No. 2885. Answer to Amended Petition. Filed November 18th, 1920. G. A. Witt, Court Clerk.

That thereafter, to wit, there was filed in said cause by the plaintiff a Receipt of a copy of said Answer to said Amended Petition and consent that the same be filed out of time, which said receipt and consent, being in words and figures as follows, to wit:

STATE OF OKLAHOMA,
Stephens County.

MAGNOLIA PETROLEUM COMPANY, a Joint Stock Association;
John Sealy, E. R. Brown, R. Waverly Smith, E. E.
Plumly, and W. C. Proctor, as Trustees, Plaintiff.

vs.

WILLIAM T. PRICE and ORA PRICE, his wife, Defendants.

In the District Court.

Receipt is hereby acknowledged of a copy of the answer and exhibits thereto, in the above entitled cause, and we hereby consent to the filing of such answer out of time.

BLAKENEY & MAXEY,
Attorneys for Plaintiff.

Endorsed: No. 2885. Filed in the District Court, November 18th, 1920. G. A. Witt, Court Clerk.

That thereafter, to wit, there was filed in said cause by the State of Oklahoma, a Petition of Intervention; which Petition of Intervention so filed is in words and figures as follows, to wit:

In the District Court in and for Stephens County, State of Oklahoma.

MAGNOLIA PETROLEUM COMPANY, a Joint Stock Association,
John Sealy, E. R. Brown, R. Waverly Smith, E. E.
Plumly, and W. C. Proctor, Trustees, Plaintiffs.

vs.

WILLIAM T. PRICE and ORA PRICE, his wife, Defendants.

No.———

Notice.

To Stuart, Sharp & Cruce and Blake, Boys & Shear,
Attorneys for the above named defendants.

You are hereby notified that the State of Oklahoma on the relation of the Commissioners of the Land Office of the State of Oklahoma will, on the 23rd day of December, 1920,

present its application to the above court for permission to file herein an interplea on the behalf of said State of Oklahoma on the relation of the Commissioners of the Land Office, a copy of which interplea is herewith handed to you.

S. P. FREELING,
Attorney General, State of Oklahoma.

GEO. E. MERRITT,
Law and Executive Clerk.

We hereby acknowledge service of the above notice and acknowledge a receipt of a copy of the state's interplea in the above entitled action.

STUART, SHARP & CRUCE,
BLAKS & BOYS,
Attorneys for Defendants.

December 13, 1920.

STATE OF OKLAHOMA,
Stephens County, ss.:

In the District Court in and for Said County and State.

MAGNOLIA PETROLEUM COMPANY, a Joint Stock Association,
John Sealy, E. R. Brown, R. Waverly Smith, E. E.
Plumly, and W. C. Proctor, Trustees, Plaintiffs.

vs.

WILLIAM T. PRICE and ORA PRICE, his wife, Defendants.

STATE OF OKLAHOMA, *Ex rel.* Commissioners of the Land Office of the State of Oklahoma, and *Ex rel.* S. P. Freeling, Attorney General of the State of Oklahoma, Intervenor.

No. ———

Petition of Intervention.

Comes now the State of Oklahoma, *ex rel.* the Commissioners of the Land Office of said State, and *ex rel.* S. P. Freeling, Attorney General of said State, George E. Merritt, Law and Executive Clerk of the Commissioners of the Land Office of Oklahoma, and, complaining of the plaintiff and defendants in the above entitled action, for cause of action herein alleges and says:

That the State of Oklahoma, by virtue of the Enabling Act, creating the State of Oklahoma, and the ordinance accepting the terms of such Enabling Act, and the Constitution of said State, is the owner of the following described real estate, situate in Stephens County, Oklahoma, to wit:

The Northeast Quarter of Section 33, Township 1 South, Range 8 West.

Intervenor further alleges that, pursuant to House Bill No. 414, Article 2, of the Session Laws of 1907-08, the Commissioners of the Land Office proceeded to appoint appraisers, and which said appraisers, as soon as practicable, proceeded to appraise all of the lands granted to the State of Oklahoma, for educational and public building purposes, and did appraise the above described tract of land and file their report in the office of the Commissioners of the Land Office.

Intervenor further alleges that, pursuant to Senate Bill No. 1, Article 2 of Chapter 28 of the Session Laws of 1909, which authorized the Commissioners of the Land Office to sell and convey the school and other public lands of the State of Oklahoma upon the appraisalment for the year 1908, the Commissioners of the Land Office notified the defendant William T. Price, the lessee then in possession of the above described lands, of the appraised value of his improvements, and the said defendant, William T. Price, being dissatisfied with the appraised value of his improvements, did notify the Commissioners of the Land Office of his dissatisfaction therewith; whereupon the said land covered by said lease contract with the said William T. Price was reserved from sale pending a review of said appraisalment.

Intervenor further alleges that on the date said appraisalment was made one William T. Cick was the lessee of record of said tract of land and in possession of the same; that during the interval between the date of said appraisalment of 1908 and the date of notifying the lessee of the above described lands of the appraised value of his improvements, that the defendant, William T. Price, by proper relinquishment and extension certificates, became the agricultural lessee of said lands.

Intervenor further alleges that the said lands above described were leased lands, and the said defendant Price was the lessee of same, and that the said Price did not at any

time or has not at any time presented an application or petition for the sale of the said lands, and has not at any time presented a petition to the Commissioners of the said Land Office asking for a sale of the said tract so leased to him.

Intervenor further alleges that on the 26th day of August, 1915, the said Price was in possession of the said tract and holding the same as an agricultural lessee, as provided by the laws of said State, a copy of which said lease is attached to the plaintiffs' Amended Petition, and here referred to and made a part of this petition of intervention, and that on the said date the Honorable Commissioners of the Land Office, acting under the provisions of Senate Bill No. 338, Session Laws of 1907-08, determined that the said land was known to contain oil or gas and was deemed valuable for oil and gas purposes, and did enter of record in their office their finding declaring that such oil and gas character exists, and that the same was valuable for oil and gas purposes, and further declaring that the oil and gas deposits were segregated from the surface use and interest therein, and such segregation of such deposits did conclusively withhold the same from sale, lease or other alienation, except as provided by the said Senate Bill No. 338. A copy of said order of segregation is incorporated in the plaintiffs' Amended Petition, and is hereby referred to and made a part of this petition of intervention.

Your intervenor further alleges that immediately after such segregation it proceeded to advertise and sell a lease upon the said land for oil and gas purposes, and on the 20th day of November, 1918, caused notice to be duly given for sealed bids for the leasing of the said tract of land for oil and gas purposes, subject to a one-eighth royalty reserved to the State, and that on the 31st day of December, 1918, the Magnolia Petroleum Company filed its sealed bid, offering to pay a bonus of \$8,000.00 for an oil and gas lease on said tract of land, and the said bid being duly opened, the consideration of the same was continued until January 4, 1919, and that at a regular session of the said Commissioners of the Land Office, held on the 4th day of January, 1919, the said bid of the Magnolia Petroleum Company was duly accepted and a lease ordered issued therefor to the said plaintiff in this action. And that thereafter, to wit, on the said 4th day of January, 1919, the

said Commissioners of the said Land Office of the State of Oklahoma, by R. L. Williams, Governor and Chairman of said Board, attested by A. M. McKinney, Secretary of the Commissioners of the Land Office, did execute an oil and gas mining lease to the said Magnolia Petroleum Company, John Sealy, E. R. Brown, R. Waverly Smith, E. E. Plumly and George C. Greer, as Trustees, a copy of which said lease is attached to plaintiffs' Amended Petition and here referred to and made a part hereof.

Your intervenor further alleges that the said defendant Price was the owner of an agricultural lease upon said tract of land and had no right to and was not possessed of any right, title or claim to the oil and gas under said premises, or any part thereof, and held his agricultural lease upon the said premises subject to the rights of the State and the State's lessee mining the said premises for oil and gas or other minerals.

Intervenor further alleges that under and by virtue of the provisions of the said lease, made with the said plaintiff, that it is entitled to one-eighth of the oil or gas produced by and under said royalty interest.

Intervenor further alleges that the interference by the said defendant with the plaintiff in said cause, in the entering upon the said premises to drill wells, discover and produce oil and gas, prevents the State of Oklahoma, intervenor herein, from receiving its royalty, as in said lease provided, and is thereby causing the said intervenor irreparable injury and damage; that many wells are being drilled in the immediate territory surrounding the said tract, and the said tract will be drained of large quantities of its oil and gas, unless same is properly developed. The extent of such drainage cannot be ascertained or determined.

Intervenor hereby adopts as a part of this petition in intervention all of the allegations of plaintiffs' Amended Petition and exhibits attached thereto, and makes the same a part hereof as though fully re-written herein.

Intervenor alleges that under the laws of said State the intervenor is the one entitled to all the oil and gas produced from said tract, except so far as same may be granted under the terms and conditions of the oil and gas mining lease made to the plaintiff herein, and that the defendants have no interest

in any such oil or gas, and are unlawfully and wrongfully asserting any claim thereto, and unlawfully and wrongfully attempting to prevent the intervenor and its lessee, the plaintiff herein, from developing and producing such oil and gas.

Intervenor further alleges that the said plaintiff, as provided by the laws of said State, has executed a bond and filed the same with the Secretary to the Commissioners of the said Land Office, as required by law, by the terms and conditions of which the said plaintiff stipulated and agreed to pay any damages that may be suffered by the said defendant by reason of entering upon the said tract for the purpose of producing oil and gas, and that the amount so owing to the defendants, damages to their surface and agricultural rights, ought to be ascertained and determined, and the plaintiff be required to pay said amounts to the defendants, as by law provided.

Wherefore, intervenor prays that the said defendants, and each of them, be enjoined from in any wise interfering with the intervenors and its lessee, the plaintiff herein, in the operation of the said premises for oil and gas, and the development of the oil and gas therein, and the production thereof, and that their claim to any of the oil or gas produced therefrom be adjudged unfounded and invalid, and that the intervenor be adjudged and decreed to be the owner of all oil, gas and other mineral rights therein, subject to leases now made by the said Commissioners or hereafter to be made, under the terms and provisions of the laws of said State, and for such other and further relief as under the premises the intervenor is entitled to, and for costs.

S. P. FREELING,
Attorney General of the State of Oklahoma.

GEO. E. MERRITT,
Law and Executive Clerk.

STATE OF OKLAHOMA,
Oklahoma County, ss.:

George E. Merritt, being duly sworn, deposes and says that he has read the above and foregoing petition of intervention and that the allegations thereof are true as he verily believes.

GEO. E. MERRITT.

Subscribed and sworn to before me this 13 day of December, 1920.

RUTH QUEENAN, *Notary Public.*

My Commission expires March 29, 1924.

[SEAL]

Endorsed: No. 2885. Petition of Intervention. Filed in District Court Dec. 3, 1920. G. A. Witt, Court Clerk.

That thereafter, to wit, on the 3rd day of March, 1921, there was filed in said cause an Answer to the Petition for Intervention, which said answer so filed is in words and figures as follows, to wit:

STATE OF OKLAHOMA,
Stephens County.

In the District Court.

MAGNOLIA PETROLEUM COMPANY, a Joint Stock Association,
John Sealy, E. R. Brown, R. Waverly Smith, E. E.
Plumly, and W. C. Proctor, Trnstees, Plaintiffs,
vs.

WILLIAM T. PRICE and ORA PRICE, his wife, Defendants.

STATE OF OKLAHOMA, Intervenor.

Case No. 2885.

Answer to Petiiton for Intervention.

Come now the defendants and each of them and for answer to the petition of intervenors filed upon part of the State of Oklahoma, allege and state:

1. That pursuant to the stipulation made between the parties in said action said defendants file their amended answer to the petition of plaintiffs as their answer to the petition of intervention by the State of Oklahoma, and make the same a part hereof as though fully set out herein in so far as the same may be applicable to the said petition of intervention.

2. Defendants deny each and every allegation contained in the said petition of intervention except such allegations as are alleged to be true in said amended answer and admitted to be true herein.

3. Defendants admit that the State of Oklahoma have recognized defendant William T. Price as the lessee of the lands involved from and prior to the first appraisalment made by the State of Oklahoma for sale purposes in January, 1909, and until this date.

4. Defendants specifically deny that they did anything that warranted the Commissioners of the Land Office in reserving said lands from sale or refusing to sell the same and allege that the appraisalment of 1909 was duly and regularly approved by the Commissioners and that the defendants at no time availed themselves of the right under the law to appeal from said appraisalment and that said appraisalment became final and conclusive between the parties.

5. Defendants further allege that subsequent thereto and in 1915, said land again was appraised for said purposes and that said appraisalment was accepted by the defendant William T. Price, and that said appraisalment became final and no appeal was taken by the said defendants from said appraisalment.

6. Defendants further state that by reason of the neglect and failure of the Commissioners of the Land Office, the intervenors herein, to sell the land as provided by law and at the time provided by law that the defendants are entitled to relief against said Commissoiners, adjudging the defendant, William T. Price, to be the equitable owner of the land in controversy and entitled to a certificate of purchase thereto, and that defendants hereby offer and tender in court, if it should be adjudged by the court that the defendants should do so, the rental on said land for the year 1926, which matured in October, 1920, during the pendency of this action, and the defendant further allege that they are ready, willing and able to purchase said land and offer and tender to pay in court such amounts of the purchase price as the court may determine to be just and equitable in the premises.

Wherefore, defendants pray the judgment of the court according to the prayer of the amended answer filed herein, and further pray that they be adjudged to be the equitable owners of said land and the right to purchase said land

and for such other and further relief as to the court may deem just and equitable.

STUART, SHARP & CRUCE,
STEVENS & RICHARDSON,
BLAKE & BOYS,

Attorneys for Defendants.

Endorsed: No. 2885. Filed in District Court Mar. 3, 1921.
G. A. Witt, Court Clerk.

That thereafter, on the 3rd day of March, 1921, the intervenor filed a motion to strike, which said motion is in words and figures the same as the motion of plaintiff, and the court being fully advised in the premises, overrules said motion, to which the intervenor excepted, and thereafter, on the said 3rd day of March, 1921, the intervenor filed its demurrer, which said demurrer was in words and figures the same as the demurrer filed by the plaintiffs herein, to the defendants' answer to the amended petition of plaintiffs, and the court being fully advised in the premises overrules the said demurrer, to which the intervenor at the time excepted.

That thereafter, to wit, on March 3rd, 1921, there was filed in said cause a Reply by the plaintiff to the Defendants' Answer herein, which Reply is in words and figures as follows, to wit:

In the District Court in and for Stephens County, State of Oklahoma.

MAGNOLIA PETROLEUM COMPANY, a Joint Stock Association,
Jolin Sealy, E. R. Brown, R. Waverly Smith, E. E.
Plumly, and W. C. Proctor, Trustees, Plaintiffs,

vs.

WILLIAM T. PRICE and ORA PRICE, his wife, Defendants.

No. ———

Reply.

Comes now the plaintiff in the above entitled action and for its reply to the defendants' answer herein, alleges and says:

That it denies each, every and all of the allegations in said answer contained, and denies specifically that the said W. T. Price has any preference right to purchase said lands.

WOMACK & BROWN,

B. B. BLAKENEY,

S. W. HAYES,

Attorneys for Plaintiff.

Endorsed: No. 2885. Filed in District Court Mar 3, 1921.
G. A. Witt, Court Clerk.

That thereafter, to wit, on March 3rd, 1921, there was filed in said cause by the Intervenor, State of Oklahoma, a Reply to the answer of the defendants, which said reply is in words and figures as follows, to wit:

In the District Court in and for Stephens County, State of Oklahoma.

MAGNOLIA PETROLEUM COMPANY, a Joint Stock Association,
John Sealy, E. R. Brown, R. Waverly Smith, E. E.
Plumly, and W. C. Proctor, Trustees, Plaintiffs,

vs.

WILLIAM T. PRICE and ORA PRICE, His Wife, Defendants.

No. ———

Reply.

Comes now the intervenor in the above entitled action and for its reply to the defendants' answer herein, alleges and says:

That it denies each, every and all of the allegations in said answer contained, and denies specifically that the said W. T. Price has any preference right to purchase said land.

GEO. E. MERRITT,

*Attorney for the Commissioners
of Land Office.*

Endorsed: No. 2885. Filed in District Court Mar 3, 1921.
G. A. Witt, Court Clerk.

STATE OF OKLAHOMA,
Stephens County, ss.:

In the District Court of Stephens County, State of Oklahoma.

MAGNOLIA PETROLEUM COMPANY, a Joint Stock Association,
John Sealy, E. R. Brown, R. Waverly Smith, E. E.
Plumly, and W. C. Proctor, Trustees, Plaintiffs,

vs.

WILLIAM T. PRICE and ORA PRICE, His Wife, Defendants.

No. 2885.

Transcript of Stenographer.

Be it remembered that on this 3rd day of March, 1921, the above entitled cause came on for hearing before the Court and the plaintiff appearing by its attorneys, B. B. Blakeney, S. W. Hayes and Womack & Brown, and the defendants, William T. Price and Ora Price, appearing in person and represented by their attorneys, Blake & Boys, Stevens & Richardson and W. C. Stevens, and the State of Oklahoma, Intervenor herein, appeared by Geo. E. Merritt, and all parties announcing ready for trial, the court proceeded to hear the matter, and upon said hearing there was introduced the following evidence as follows, to wit:

Mr. Blakeney: Leave of court being had the State of Oklahoma, on the relation of the Commissioners of the Land Office, files Amended Petition of Intervention in this case.

Mr. Blakeney: It is agreed by the parties hereto that the answer filed to the petition, or amended petition, of the plaintiff, may be refiled and considered as an answer to the petition of intervention.

And thereupon the State asks leave to file motion, to adopt the motion filed to defendants' answer, which is overruled and to which the State excepts.

The State files a demurrer to the answer, which is overruled and exceptions allowed.

And the State thereupon files a demurrer in tenor, same as demurrer of plaintiff and the same is overruled, to which

the State excepts and exceptions allowed. And the State files its reply, which is a general denial.

Defendants ask leave to file their supplemental and additional answer to the petition of intervention.

Plaintiff asks to file its reply, which is a general denial.

Mr. Blakeney: Let the record also show that Judge Sam W. Hayes appears as co-counsel in the case for plaintiff.

Mr. Blakeney: Let the record show the stipulations, as to part of the facts, is filed in this case.

Mr. Blakeney: Plaintiff now offers in evidence paragraph one (1) of the stipulations, which read as follows:

That plaintiff is a joint stock association organized under the laws of the State of Texas and licensed to do business in the State of Oklahoma, engaged in the petroleum oil and gas industry, including production, transportation, refining and marketing thereof. That a copy of said Trust agreement is hereto attached, hereby referred to and for the purpose of identification marked "Exhibit A." We now offer Exhibit "A" in evidence.

Mr. Boys: Defendants object to the introduction of Exhibit "A" for the reason that the action of the Commisisoners of the Land Office, in executing such a contract was in violation of the rights of the defendants and without his consent and was an effort on their part to take the property of these defendant without process of law and is in violation of his constitutional rights and for the reason it is irrelevant, incompetent and immaterial as to these defendants.

Court: Overruled. Defendants excepts.

capital stock of said Company is \$20,000,000.00, that it proposes to invest or employ in the transaction of its business in the State of Oklahoma, not to exceed the sum of \$3,500,000.00 of its capital, at this time, and that the remainder or a greater amount of its capital will not be used in connection with its business within the State without further notice and payment of the proper admission fees.

Vice-President of the Magnolia Petroleum Company.

Subscribed and sworn to before me, a Notary Public, in

and for the aforesaid County and State this the 6th day of January, 1916.

Notary Public.

Mr. Blakeney: We offer in evidence paragraph two (2) of the stipulations, which reads as follows:

That defendants are husband and wife, and with their family are residing and were so residing at and prior to the commencement of this action, upon the lands involved in this controversy, to wit: The Northeast Quarter ($\frac{1}{4}$) of Section Thirty-three (33), Township One (1) South, Range Eight (8) West of the Indian Meridian, lying and situate in Stephens County, Oklahoma.

Mr. Blakeney: We offer in evidence paragraph Ten (10) of the stipulations, which reads as follows:

That on the 4th day of January, 1919, the Commissioners of the Land Office of the State of Oklahoma, by the Governor and the plaintiff by its agent, H. W. Williams, executed the contract, copy of which is attached to plaintiff's petition and marked "Exhibit A," (Record p. 47), and a copy of which is attached hereto, marked "Exhibit "F" (Record p. 57), for purposes of identification, hereby referred to and made a part hereof. That at said time the said defendants were in possession of said premises as aforesaid and refused plaintiff access to said lands, and possession of all or any part thereof denied aid plaintiff any right to enter upon, explore, exploit or develop the minerals in said land under the contract "Exhibit F (Record p. 57) herein, and thereupon the plaintiff instituted this action and the proceedings in this action were thereafter done and performed.

Defendants object to introduction of said Exhibit "A" attached to plaintiff's amended petition, as being incompetent, irrelevant and immaterial and as being in violation of their rights guaranteed by the Constitution and Laws of Congress.

Overruled. Defendants except.

We desire to introduce in evidence paragraph Eleven (11) of the stipulation, which reads as follows:

That theretofore, to wit, on the 26th day of August, 1915,

the Commissioners of the Land Office of the State of Oklahoma in session, had among others the following proceedings:

"Whereas we have had offers from reputable parties to place oil and gas bids on the following unsegregated school lands, I hereby recommend that the following described land be segregated for oil and gas purposes and that they be advertised for bids for leasing * * * the Northeast Quarter ($\frac{1}{4}$) of Section Thirty-three (33), Township One (1), South, Range Eight (8) West, Stephens County * * *. After discussion by the Board, it was thereupon moved by Mr. Lyon and seconded by Mr. Howard, that the above sections and quarter sections be declared valuable for mineral purposes and the same be segregated and withheld from sale."

And the same is entered of record in the office of the Board of Land Commissioners of the State. And, thereafter, after advertisement of said tract for leasing for oil and gas purposes, and after receipt of bids thereon an instrument "Exhibit F" hereto and identified hereinabove in paragraph 10 was executed.

Mr. Boys: We desire to object to the introduction of the order of segregation of paragraph Eleven (11) read by counsel, for the reason it's irrelevant, incompetent and immaterial and tending to judge character of land under *ex parte* proceedings, and without notice or hearing to the lessee, Price, defendant herein, or of such action tending to make the same binding upon him without notice or hearing. We would like to have the stenographer note for the further reason that it was without the power of the Commissioners of the Land Office to pass such a resolution.

Court: Overruled. Exceptions.

Mr. Blakeney: We now desire to offer paragraph Twelve (12) of the stipulation in evidence, which reads as follows:

That about the time of the institution of this action, a producing oil well was brought in on said Section Thirty-three (33) and rapid development of oil followed in the other three quarters of said section thirty-three, and oil was produced therefrom and that on this date, a number of producing oil wells are on said section.

We also offer in evidence paragraph Thirteen (13) of the stipulation, which reads as follows:

That since the institution of this action and under the

protection of the injunction herein issued, said Northeast Quarter (NE $\frac{1}{4}$) of said Section Thirty-three (33) aforesaid, a number of producing oil wells have been drilled by the plaintiff and plaintiff is continuing to make additional locations and drilling thereon and is taking the oil and gas from therein and thereunder over the objection and protest of defendant. That plaintiff, before suit and in petition, offered to pay to the defendant for any damage or loss that they might be entitled to under Section 7200 of Revised Laws of 1910, and Chapter ---- of the laws of 1917, but the defendants still refused to allow plaintiff to go said premises for the purposes aforesaid. After this action was instituted and the injunction obtained, and continuously to this date, plaintiff has produced and is producing and taking from said lands a large amount of barrels of oil per day under the rights claimed by virtue of the lease, "Exhibit F" (Record p. 57).

PLAINTIFFS' EVIDENCE.

RALPH TALLEY, being first duly called as a witness for the Plaintiff and after being duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination by Mr. Blakeney:

Q. Mr. Talley, state your name to the Court?

A. Ralph Talley.

Q. Where do you reside?

A. Duncan, Oklahoma.

Q. What is your business or occupation now?

A. Working for Magnolia Petroleum Company.

Q. Were you working for the Magnolia Petroleum Company at the time the plaintiff attempted to procure possession of the property in controversy in this case?

A. I was.

Q. You are acquainted with Mr. and Mrs. Price?

A. I am.

Q. Where did you first see them; where did you first meet them?

A. I guess here in town. You mean after this case started?

Q. You went out to their place to see about getting possession of this land?

A. Yes, sir.

Q. Did you attempt to obtain possession of this property

in order that the Magnolia Petroleum Company might drill and develop it?

A. I did.

Q. Did you, on or about the 25th day of May, 1920, have a talk with the defendant, Price, about procuring a location for Magnolia Petroleum Company, to commence drilling?

A. Yes, sir.

Q. Do you know the date of that conversation?

A. No, sir; I think early in May; I think 12th day of May.

Q. 1920?

A. 1920.

Q. Where did you see him at that time?

A. At his home.

Q. Mrs. Price there?

A. Yes, sir.

Q. I wish you would now state the conversation you had with them?

A. Sense of the conversation was I went out to make arrangements for a location on this tract of land and I went to see these parties to see what kind of agreement we could make to get it and Mr. Price told me that he would sell out to us all of his right for \$50,000.00, or we could give him one-half ($\frac{1}{2}$) of any royalty and that is the only agreement he would make with reference to us getting it.

Q. You stated about agreement about getting it; anything said there about any damages that would be done to his crops by reason of the drilling on there?

A. Yes, sir; we talked about that.

Q. What did you say with reference to that?

A. We talked over the damage that would accrue on account of the cotton crop coming in; damage to the surface of the land and we proposed to leave the damages to a board of arbitration.

Q. Why did you propose that; could you agree on it?

A. No, sir.

Q. The measure of damages you couldn't agree?

A. No, sir.

Q. Just what else was done or what else was said between you; did he state how much damage would be done to the land.

Mr. Boys: We object to that as to what he said.

Court: Let him answer over objections. Exceptions.

Q. Tell us the conversation between you if you can?

A. Well, that was about all of it; we talked quite a little time about it, but it was along the same line.

Q. On what line?

A. Trying to make arrangements to come in and make a location and operate on the lease.

Q. What, if anything, did he say why he hadn't bought the land, or why it hadn't been sold?

Mr. Boys: Object to that; irrelevant, incompetent and immaterial.

Court: Overruled. Defendant excepts.

A. I believe first he said because he had bought this land from a party named DeArmon, or had bought his preference right to the lease and he hadn't paid DeArmon the full amount he was to pay him and that DeArmon was gone some place when the appraisers first came around and that the title to the agricultural part at that time stood in DeArmon's name and they couldn't make arrangements for the land to be sold. I think he said they were around three different times to appraise the improvements on the land so it could be sold. I think the second time they couldn't arrive at an agreement as to the value of the improvements on the land.

Q. What, if anything, did he say about having any objections to the Magnolia?

A. I don't know that he said he had any objections.

Q. Did he say anything about that if you recall?

A. Along what line was that?

Q. I can't lead you. I just want you to tell all the conversation. I haven't talked to this witness, court please, and I just want to refresh his memory the best I could. Have you told all you can recall?

A. I believe I have at this time.

Q. Did you say, in that conversation, you would pay him for any damage he might sustain, for any damage he might sustain by us going on there?

A. Yes, sir; I proposed that to him. I proposed to pay him.

Q. I'll ask you if you went out there for that purpose?

A. I did.

Q. You stated he wanted \$50,000.00 or half of the royalty?

A. Only proposition he would make; that is as far as we could get with him.

Cross examination by Mr. Sharp:

Q. Say you are an employee of the Magnolia?

A. Yes, sir.

Q. How long have you been in their employ?

A. 15th of September, 1919.

Q. What department?

A. Lease and claim department.

Q. Claims that arose in this case came under your authority?

A. Yes, sir.

Q. Now, you say you had this conversation, you think, about the 12th of May?

A. About that date.

Q. Where was that conversation; Mr. Price's home?

A. Yes, sir.

Q. Who was present?

A. Mr. Price, Mr. Neal and I.

Q. Who is Mr. Neal?

A. An employee of the company.

Q. Where is Mr. Neal?

A. Here in the room.

Q. Court room?

A. Yes, sir.

Q. Anyone else present?

A. Probably some of Mr. Price's little girls heard the conversation, part of it anyway.

Q. You say Mr. Price wanted you to pay him \$50,000.00, or half of the royalty?

A. Yes, sir.

Q. In order to let you go in and commence drilling, or to make a location?

A. Yes, sir.

Q. That was for his rights in the land he contended for?

A. Yes, sir.

Q. Was it in that same conversation you say Mr. Price stated he hadn't settled with Mr. DeArmon?

A. Yes, sir.

Q. Are you sure of that, Mr. Talley?

A. Yes, sir.

Q. What did he say he hadn't settled?

A. It hadn't been settled when these appraisers came around the first time; in order to have the land sold he had to have the right to the improvement in order to have the land sold.

Q. You don't mean to say at the time of this conversation he hadn't settled with Mr. DeArmon?

A. No, sir.

Q. Do you know what time Mr. Price bought that land?

A. No, sir.

Q. Did he tell you?

A. I believe he did.

Q. Didn't he tell you he bought it October, 1908?

A. He might have, I don't know.

Q. Do you know when he moved on the land?

A. No, sir.

Q. Did he tell you?

A. No, sir.

Q. Had you known Mr. Price before this time?

A. Yes, sir.

Q. How long?

A. Possibly two or three years.

Q. You think you have told all the conversation you had there?

A. We had quite a conversation; I suppose we talked there about an hour.

Q. In other words he asserted his rights to that land and wanted you to pay him \$50,000.00 or give him half of the royalty?

A. Yes, sir; said we could pay him \$50,000.00, and he would give it up and leave, or could pay him one-half of the royalty and he would give it to us; that was his proposition.

Q. How much did you offer him there for his right?

A. I didn't make any offer any more than I offered to leave it, that is, the damages, to a board of arbitration.

Q. That is as near as you came and he refused to do that?

A. My proposition was for him to select a man and I select one and these two select the third and leave it to them as to the amount of damages.

Q. In that conversation when he said he wanted \$50,000.00, that was for a release of his preference rights?

A. Yes, sir; I suppose that is what he meant.

Q. That is what he said?

A. Don't know that he said that; he said if we would give him \$50,000.00, he would get out and let us have it.

Q. Has he been living there all the time you have known him?

A. Yes, sir.

Q. As a home?

A. Yes, sir.

Q. Still living there?

A. Yes, sir.

Q. You have detailed all the conversation that took place in respect to any settlement with Mr. Price, have you, for going on the land?

A. Mr. Price talked at length about his misfortune; he talked about not getting a satisfactory appraisement on the place; didn't satisfy him.

Q. Now, I mean your entire testimony on the stand; you have stated here on the stand all that transpired or took place in regards to settlement?

A. Yes, sir; as far as I remember at this time that is all.

Examination by Mr. Merritt:

Q. Mr. Talley, in that conversation relative to the appraisement, did he make any complaint because the State had endeavored to fix the appraisement with him?

A. He didn't think they had given him enough; didn't think they had appraised the improvements high enough.

Q. Did he state why he didn't think it was high enough?

A. I don't know.

Q. I will ask you if he didn't state to you that another man, or one of his neighbors, wanted to bid on it and he wanted the State to raise the appraisement to keep the other man from coming in and bidding on the property.

Mr. Sharp: We object to that; incompetent and not material.

Court: Overruled. Defendant excepts.

A. He said one time they were trying to get him to agree to the appraisement on the improvements. He said one of the neighbors was figuring on the land and he couldn't afford to pay as much as he could.

Q. That is why he wanted the appraisement made higher?

Mr. Sharp: Objected to for the reason it is immaterial.

Court: Overruled. Defendants excepts.

A. I suppose so from his conversation.

Mr. Sharp: We move the answer be stricken as a presumption of the witness.

Court: Let it be stricken.

That's all.

Re-cross examination by Mr. Sharp:

Q. What appraisalment was he talking of?

A. Appraisalment on the improvements on the land.

Q. For what year?

A. For the time it would be sold.

Q. Did he tell you how many appraisements had been made on the land by the School Land Board Commission, or its officers?

A. Yes, sir; he said they attempted to appraise it three times.

Q. Not complaining of all the appraisalment, was he?

A. First one, I think, he said was satisfactory, but the lease to the land was not in his name, it was still in DeArmon's name.

Q. The first one was satisfactory, but the second was not appraised sufficiently high?

A. I think that is right.

Q. And the third one; what did he say about that, do you remember?

A. Yes, sir; was that they hadn't given a satisfactory appraisalment on the improvements.

Re-direct examination by Mr. Blakeney:

Q. Did you have more than one conversation with him?

A. Later on, Mr. Campbell, Mr. Ambrister and Mr. Fairchild, and I,—

Q. Know what they went out there for?

A. Same purpose.

Q. Same purpose doesn't explain. What was it?

A. To make arrangements with him to operate on the lease.

Q. What arrangements did they go out to make?

A. Stake out a location.

Q. Mr. Ambrister is a lawyer?

A. Yes, sir.

7
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Q. Did he go out to stake out a location?

A. He went out to see something about settlement for damages.

Q. That is what you went out there for, to settle for damages?

A. Yes, sir.

Q. Tell him you were out for that purpose?

A. Yes, sir.

Q. What did he say?

A. Told me about the same as first time.

Q. Did he say he would or would not settle for any damages caused by a location on the property?

A. Said he wouldn't settle.

Q. He said the Company could buy the entire right, and all the right he claimed by giving him \$50,000.00, or one-half of the royalty, or tear up the lease with the State and lease from him; did he say that?

A. Yes, sir.

Q. And wouldn't settle for damages to his crop or damage to the surface rights under the lease?

A. No, sir.

Re-cross examination by Mr. Sharp:

Q. You didn't make him any offer at that time?

A. No more than to leave it to arbitration.

That's all.

Witness excused.

CHAS. M. NEAL, being called as a witness for the plaintiff and after being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. Blakeney:

Q. State your name to the court?

A. Chas. M. Neal.

Q. You are in the service of the Magnolia Petroleum Company?

A. I am.

Q. In what department?

A. In the land and lease department.

Q. Acquainted with Mr. Price?

A. Met him once.

Q. When was that?

A. That was on a trip I made to Mr. Price's home with Mr. Talley, middle of May, sometime.

Q. Did you have or hear a conversation between Mr. Talley and Mr. Price?

A. I did.

Q. Between Mr. Price and Mr. Talley?

A. Yes, sir, I did.

Q. Just state the conversation you heard there?

A. Mr. Talley called me and told me that he had a matter to take up with Mr. Price, relative to securing his permission to drill a well on that quarter section of land where Mr. Price lives—

Q. Just tell what conversation occurred out there?

A. We approached Mr. Price and Mr. Talley asked him his objections to the Magnolia drilling on this piece of land and he said his objections was that the State hadn't treated him right and so far as that was concerned he figured he was the party from whom the Magnolia Company should have leased from instead of the State; that was his objections, because the Magnolia was attempting to drill on the land under a lease from the State, instead of from him, and Mr. Talley and myself asked him some questions with reference to what damages he would claim for a location on the place and that was our business out there, and he said he would consider no such proposition, that the only proposition he would consider that we pay him \$50,000.00 for his interest in that quarter section or that he would accept one-half of the royalty derived from the property, or if the Magnolia Company would tear up the lease with the State and make a new one with him and that is the only three ways by which they could do business with him.

Q. What did he say with reference to how he would let the Magnolia Company come in and drill?

A. He said he would only accept only under those three propositions.

Q. Is that all the conversation that you can remember?

A. That is about all the conversation with reference to drilling on the place; he went into details why he didn't own the land.

Q. What did he say with reference to that?

A. He said the State had made several appraisements, don't know how many, on the place; that one of the appraisements he couldn't accept on account of the title not being in

him at that time, of another appraisement, or possibly two more was because he had a couple of neighbors to his north that could afford to pay more for this land than I can and I don't want it sold for that reason; the other reason is he didn't want it sold because he had bought the preference right at a bargain; of course, the State had offered him as much money as he had paid, but just because he had bought it at a bargain it was no reason why he should sell it at a bargain.

Cross examination by Mr. Sharp:

Q. This conversation was had by Mr. Talley, and you were there present?

A. Yes, sir.

Q. You were present together during the entire time?

A. Yes, sir.

Q. You know he told you during that conversation there had been several appraisements made?

A. Yes, sir; he did.

Q. Did he tell you he was satisfied with any of those appraisements?

A. I believe he said he was satisfied with one, but he couldn't accept it.

Q. That is while the lease was in DeArmon's name?

A. I believe it was.

Q. In other words, that is what you understood to be the first appraisement, while the title yet stood in DeArmon's name?

A. Yes, sir.

Q. Did he say anything at that time, that he, at the time of the appraisement, hadn't fully settled with Mr. DeArmon?

A. Yes, sir; he said he owed Mr. DeArmon something on this purchase and he said Mr. DeArmon was forced to leave the country on account of some trouble he had and he was unable to pay him. I don't know whether he meant he was unable financially, or whether he couldn't reach him.

Q. That appraisement was satisfactory, but the title was not in his name?

A. That is the way I understood it.

Q. The other appraisement, did he tell you when it was made?

A. He possibly did.

Q. Do you know when it was made?

A. No, sir.

Mr. Boys: I want at this time to object to any appraisal subsequent to the first appraisalment, for the reason, under the law, no appraisalment could be made, except for 1907-1908.

Court: Overruled. Exceptions.

Q. Was that the appraisalment that seemed to be satisfactory to him?

A. I don't know how many he said had been made since he owned the property; two or three, but none of them had been satisfactory.

Q. None of the appraisements made while he owned the lease were satisfactory?

A. While he had it in shape to accept the place.

Q. He said he didn't want the land sold?

A. He did.

Q. That was in 1920, you are talking about?

A. Yes, sir.

Q. About the middle of May?

A. Yes, sir; that is when I went there with Mr. Talley.

Q. And he wanted from you at that time \$50,000.00, or one-half of the royalty, or that the Magnolia could tear up the lease from the State and lease from him, those are the three propositions he made?

A. Yes, sir, certainly.

Q. Were there anything said there at that time about his preference right lease on that land?

A. No, only general supposition that he did.

Q. Said he was holding the place under a preference right?

A. Said he received another lease from the School Land Department for another period of years for agricultural purposes.

Q. And that he owned a preference right to buy when sold?

A. Nothing said about right to buy when sold; said he owned an agricultural lease that was about to expire.

Q. You are sure he used the word "Agricultural"?

A. I am not positive about the word, but I am sure it was not an oil and gas lease.

Q. When you had this conversation with Mr. Price, I understand you to say he said he didn't want this land to sell; was that under the first appraisalment or under the second appraisalment that was unsatisfactory?

A. He said he didn't want it to sell while he was not in a position to accept the appraisalment.

Q. That he had never wanted it to sell?

A. Yes, sir; for the reason he said there were some neighbors of his that were more able to buy than he.

Q. You are quite certain of that?

A. I am.

That's all.

Witness excused.

LOUIS CAMPBELL, being called as a witness for the plaintiff and after being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. Blakeney:

Q. State your name?

A. Louis Campbell.

Q. You are in the service of the Magnolia?

A. Yes, sir.

Q. In what capacity?

A. Land and lease department.

Q. Are you acquainted with Mr. Price?

A. Yes, sir.

Q. Did you see Mr. Price in the month of May, 1920?

A. Yes, sir.

Q. Whereabouts?

A. At his place, his home.

Q. Just state what conversation, if any, you had with him about a settlement for damages?

A. Well, I went out to see Mr. Price about damages for drilling on there, on the land in controversy; that is after Mr. Talley and Mr. Neal had been out there, and I told him we would like to make arrangements to get in and we were willing to pay him whatever damages was proper, and he said he had talked to us before and was not willing for us to go in at all; that he didn't care to discuss damages, but if we wanted possession of the land that we could get it by buying him out, by paying him \$50,000.00, or could give him one-half of the royalty.

Q. Was that all the conversation you had with him about paying any damages?

A. Well, I told him we couldn't do that; that was entirely unreasonable and we offered then to arbitrate it and he wouldn't listen to that proposition.

Q. What, if anything, did he say about intending to fight the Magnolia?

A. Well, he said he wasn't going to let us in there; that he had no objections to the Magnolia as a Magnolia, but he thought he owned the land and that a number of lessees in the same position had agreed not to recognize any oil leases on the land where they were living.

Cross examination by Mr. Sharp.

No questions.

Witness excused.

Mr. Blakeney: We now offer in evidence and ask that the same be marked plaintiff's Exhibit "1," same being the original lease executed by the Commissioners of the Land Office of the State of Oklahoma, on the 2nd day of January, 1913, and as this is the original file we offer a photographic copy of the same and ask leave to substitute for the original and marked Exhibit "1."

Court: Let the original be introduced and withdrawn and the photographic copy substituted for plaintiff's Exhibit "1."

Exhibit "1" of plaintiff is received in evidence and by the Court Reporter marked plaintiff "Exhibit 1" and the same is in words and figures as follows, to wit:

Mr. Blakeney: All these papers attached together are certified copies of the proceedings before the Commissioners of the General Land Office, and I want to say that the relationship shows only by a comparison with all of them. I will offer them separately and ask that this be marked plaintiff's Exhibit "3" and offer it in evidence.

Mr. Sharp: We object to the introduction of Exhibit "3" for the reason it's incompetent, irrelevant and immaterial and does not purport to bear on the lease on the land to the Magnolia Petroleum Company, but to different parties, some time anterior to the making of the Magnolia lease, and for the further reason that the State was without authority to enact a law authorizing the Commissioners of the Land Office to segregate land of the character of this land for oil and gas purpose, where, on the advent of statehood and subsequent thereto, a preference right existed to purchase it and all of it, and for the further reason it does not appear from the certified copies that any authority to make this lease, or that any knowledge thereof was brought home to lessee, or that he

in any way ratified or consented to the same, and the state did not have the authority to enact any such legislation, or the Commissioners of the Land Office to execute any purported authority conferred under such act.

Court: Overruled. Defendants except.

Exhibit "C" is received in evidence and so marked by the Court reporter and is in words and figures, as follows, to wit:

Meeting of the Commissioners of the Land Office of the State of Oklahoma held in the Office of the Secretary at Oklahoma City, Oklahoma, Thursday, August 26th, 1915, at 10:30 A. M.

Present:

Hon. M. E. Trapp, Acting Governor and Acting Chairman.

Hon. E. B. Howard, State Auditor.

Hon. J. L. Lyon, Secretary of State.

Hon. F. M. Gault, President Board of Agriculture.

Absent:

Hon. R. H. Wilson, State Supt. Public Instructions.

The following proceedings, among others, were had:

In re Segregation of Lands for Oil and Gas Purposes: The Secretary presented the following recommendations to the Board:

"Whereas, we have had offers from reputable parties to place oil and gas bids on the following un-segregated School Lands, I hereby recommend that the following described lands be segregated for oil and gas purposes, and that they be advertised for bids for leasing.

Section 36, Twp. 1 South, Range 9 West, Stephens County.

The NE $\frac{1}{4}$ of Section 33, Twp. 1, Range 8 West, Stephens County.

Section 16, Twp. 9, Range 5 East, Pottawatomie County.

After discussion by the Board, it was thereupon moved by Mr. Lyon and seconded by Mr. Howard that the above Sections and Quarter Section be declared valuable for mineral purposes, and that the same be segregated and withheld from sale.

All vote aye. Motion prevailed.

Re Advertising State Lands for Oil and Gas Bids:

On motion of Mr. Lyon and seconded by Mr. Howard, the Secretary was instructed to cause to be advertised, under the law, the following described lands:

Section 36, Twp. 1 South, Range 9 West, Stephens County.
The NE $\frac{1}{4}$ of Section 33, Twp. 1, Range 8 West, Stephens County.

Section 16, Twp. 9, Range 5 East, Pottawatomie County.

Section 16, Twp. 10, Range 5 East, Pottawatomie County.

Section 16, Twp. 27 North, Range 1 East, Kay County.

Section 36, Twp. 29 North, Range 2 West, Kay County.

All vote aye. Motion prevailed.

Witness my hand and official signature, at Oklahoma City,
Oklahoma, on this the 26th day of August, 1915.

(Signed)

M. E. TRAPP,

*Acting Governor and Acting Chairman of
the Commissioners of the Land Office of
the State of Oklahoma.*

Attest:

A. M. McKINNEY,
Secretary.

STATE OF OKLAHOMA,
Oklahoma County, ss.:

I, A. S. J. Shaw, the duly appointed, qualified and acting
Secretary to the Commissioners of the Land Office of the
State of Oklahoma, do hereby certify that the above and fore-
going is a true and correct copy of this part of the meeting
of the Commissioners of the Land Office at their meeting on
the 26th day of August, 1915.

In Witness Whereof, I have hereunto set my hand and
official seal, on this the 1st day of June, 1920.

[SEAL]

A. S. J. SHAW,

*Secretary to the Commissioners of the Land
Office of the State of Oklahoma.*

Mr. Blakeney: We now offer in evidence Exhibit "4",
which reads as follows:

EXHIBIT "4"

*Meeting of the Commissioners of the Land Office of the State
of Oklahoma, held in the Office of the Secretary at Okla-
homa City, Oklahoma, Wednesday, October 6, 1915, at 3
P. M.*

Present:

Hon. R. L. Williams, Governor and Chairman.

Hon. J. L. Lyon, Secretary of State.

Hon. E. B. Howard, State Auditor.

Hon. R. H. Wilson, State Supt. Public Instructions.

Absent:

Hon. F. M. Gault, President Board of Agriculture.

The following proceedings, among others, were had:

Re Opening of Oil and Gas Bids. In the matter of the opening of oil and gas bids before the oil and gas committee of the Commissioners of the Land Office, which were opened at 4:00 o'clock P. M., October 4, 1915, pursuant to advertisement, the following bids were received and opened by said committee, and the Oil and Gas Committee recommended that said bids be approved and accepted, same being as follows: Bid of Amanda K. Dumenil and associates, Oklahoma City, Oklahoma, Tract No. 14, Section 36, 1 S, 9 W. Stephens County, 12½% royalty, \$161.25 bonus, and agreement to begin drilling within 180 days. On tract No. 15, NE¼ 33, 1 S, 8 W, Stephens County, 12½% royalty, \$165.25 bonus, and agreement to begin drilling within 180 days. Bid accompanied by certified check of \$1,000.00.

Bid of R. L. Irion of Cleveland, Oklahoma, tract No. 20, Section 36, Township 2, 1 N, 8 E., Pawnee County, 12½% royalty, no bonus, and agreement to begin drilling within 90 days. Bid accompanied by certified check of \$1,000.00.

The above bids were the only bids received.

It was thereupon moved by Mr. Lyon and seconded by Mr. Wilson that the recommendation of the oil and gas committee be and the same is hereby approved and accepted, and the chairman and secretary are hereby authorized to enter into oil and gas leases with said successful bidders as above set out.

All vote aye. Motion prevailed.

All lands in this sale are entered as segregated.

Witness my hand and official signature, at Oklahoma City, Oklahoma, on this the 2nd day of June, 1920.

R. L. WILLIAMS,

*Governor, and Chairman of the Commissioners
of the Land Office of the State of Oklahoma.*

Attest:

(Signed) A. McKINNEY,
Secretary.

STATE OF OKLAHOMA,
Oklahoma County, ss.:

I, A. S. J. Shaw, the duly appointed, qualified and acting Secretary to the Commissioners of the Land Office of the State of Oklahoma, do hereby certify that the above and foregoing is a true and correct copy of this part of the meeting of the Commissioners of the Land Office at their meeting on the 6th day of October, 1915.

In Witness Whereof, I have hereunto set my hand and official seal on this the 2nd day of June, 1920.

A. S. J. SHAW,
*Secretary to the Commissioners of the Land
Office of the State of Oklahoma.*

Mr. Blakeney: We offer in evidence Plaintiff's Exhibit Four (4).

Mr. Sharp: We object to the introduction of Exhibit "4" in evidence for the reason it is incompetent, irrelevant and immaterial and for the further reason that it does not purport to bear on the lease on the land to the Magnolia Petroleum Company, but to different parties, some time anterior to the making of the Magnolia lease, for the further reason that the State was without authority to enact a law authorizing the Commissioners of the Land Office to segregate lands, of the character of this land, for oil and gas purposes, where, on the advent of statehood a preference right existed to purchase it and all of it, and for the further reason that it does not appear from the certified copy that any authority to make lease, or that any knowledge thereof was brought home to the lessee, or that he in any way ratified or consented to the same, and the State did not have the authority or power to enact any such legislation, or the Commissioners of the Land Office, to execute any such purported lease under any authority conferred by or under such act.

Court: Overruled. Defendants except.

PLAINTIFF'S EXHIBIT "5."

Meeting of the Commissioners of the Land Office of the State of Oklahoma, held in the Office of the Secretary, at Oklahoma City, Oklahoma, Wednesday, January 26th, 1916, at 2:30 P. M.

Present:

Hon. R. L. Williams, Governor of Oklahoma

Hon. J. L. Lyon, Secretary of State.

Hon. E. B. Howard, State Auditor.

Hon. F. M. Gault, President Board of Agriculture.

Absent:

Hon. R. H. Wilson, State Supt. Public Instructions.

The following proceedings, among others, were had:

Re Oil and Gas Lease: In the matter of the application of Amanda K. Dumenil to have the oil and gas lease awarded under his bid on Section 36, 1 S., R. 9, W., Stephens County and NE 33 1 S., 8 W., Stephens County, October 4, 1915, made direct to the Bear Creek Petroleum Company, said application stating that the Bear Creek Petroleum Company is not affiliated with any pipe line company or corporation that is not eligible to bid on State lands; it was thereupon moved by Mr. Lyon and seconded by Mr. Howard that said application be granted and the oil and gas lease awarded under said bid ordered made to the Bear Creek Petroleum Company as requested.

All vote aye. Motion prevailed.

Witness my hand and official signature, at Oklahoma, Oklahoma, on this the 2nd day of June, 1920.

R. L. WILLIAMS,

*Governor, and Chairman of the Commissioners
of the Land Office of the State of Oklahoma.*

Attest:

(Signed) A. M. McKINNEY,
Secretary.

STATE OF OKLAHOMA,

Oklahoma County, ss.:

I, A. S. J. Shaw, the duly appointed, qualified and acting Secretary of the Commissioners of the Land Office of the State of Oklahoma, do hereby certify that the above and foregoing is a true and correct copy of this part of the meeting of the Commissioners of the Land Office at their meeting on the 26th day of January, 1916.

In Witness Whereof, I have hereunto set my hand and official seal on this the 2nd day of June, 1920.

A. S. J. SHAW.

*Secretary to the Commissioners of the Land
Office of the State of Oklahoma.*

Mr. Blakeney: We now offer in evidence plaintiff's Exhibit Six (6).

Mr. Sharp: We object to the introduction of Exhibit "6" in evidence for the reason that it is incompetent, irrelevant and immaterial and for the further reason that it does not bear on the lease on the land to the Magnolia Petroleum Company, but to different parties, some time anterior to the making of the Magnolia lease and for the further reason that the State was without authority to enact a law authorizing the Commissioners of the Land Office to segregate lands, of the character of this land, for oil and gas purposes, where, on the advent of statehood a preference right existed to purchase it and all of it, and for the further reason that it does not appear from the certified copy that any authority to make lease, or that any knowledge thereof was brought home to the lessee, or that he in any way consented or ratified the same, and the State did not have the power or authority to enact any such legislation, or the Commissioners to execute any such purported lease, under the authority conferred upon them by or under such law.

Court: Overruled. Defendants except.

Meeting of the Commissioners of the Land Office of the State of Oklahoma, held in the Office of the Secretary, at Oklahoma City, Oklahoma, Thursday, January 3, 1918.

Present:

Hon. R. L. Williams, Governor of Oklahoma.

Hon. F. M. Gault, President State Board of Agriculture.

Hon. R. H. Wilson, Supt. of Public Instructions.

Absent:

Hon. J. L. Lyon, Secretary of State.

Hon. E. B. Howard, State Auditor.

The following proceedings, among others, were had:

Re Oil and Gas: T. J. Ellis, Jr., Special Agent Oil & Gas Division, presents release of oil and gas lease of the Bear Creek Petroleum Company, covering the NE $\frac{1}{4}$, Sec. 33, Twp. 1 S., Range 8 W., Stephens County, Oklahoma, and recommends the acceptance of same. Said release is dated December 11th, 1917, executed by the Bear Creek Petroleum Company, by Thos. E. Toney, President, attest, Theodore Stockdell, Secy, and acknowledged before Tina B. West, N. P., Okla. County, on same date; the date of the lease affecting

being Dec. 29, 1915. It was moved by Mr. Gault and seconded by Mr. Wilson that said release of oil and gas lease aforesaid be and the same is hereby accepted in accordance with the recommendation of the Special Agent, and ordered filed with the Oil and Gas Division.

All vote aye. Motion prepailed.

Witness my hand and official signature, at Oklahoma City, on this the 3rd day of January, 1918.

(Signed)

R. L. WILLIAMS,
*Governor, and Chairman of the Commissioners
of the Land Office of the State of Oklahoma.*

Attest:

(Signed) A. M. McKINNEY,
Secretary

STATE OF OKLAHOMA,

Oklahoma County, ss.:

I, A. S. J. Shaw, the duly appointed, qualified and acting Secretary to the Commissioners of the Land Office of the State of Oklahoma, do hereby certify that the above and foregoing is a true and correct copy of this part of the meeting of the Commissioners of the Land Office at their meeting on the 3rd day of January, 1918.

In Witness Whereof, I have hereunto set my hand and official seal, this the 1st day of June, 1920.

A. S. J. SHAW,
*Secretary to the Commissioners of the Land
Office of the State of Oklahoma.*

[SEAL]

Mr. Blakeney: Plaintiff now offers Exhibit "7" in evidence.

Mr. Sharp: We object to the introduction of Exhibit "7" for the reason it is irrelevant, incompetent and immaterial and for the further reason that it purports to be an order made by the Commissioners of the Land Office, authorizing one T. J. Ellis, Jr., to advertise certain lands in Cotton county, such as in his opinion should be advertised for oil and gas purposes, same constituting within itself unauthorized delegation of power on behalf of the Board, for the further reason that any statute made or enacted, authorizing the Board to segregate oil and gas land, unsold public lands of the State,

was in violation of the constitutional rights of the defendants, holding preference right leases, such as defendant, Price, here, and for the further reason that any authority exercised by the Commissioners of the Land Office, under such statute, would be without force and without other lawful authority.

Court: Overruled. Defendants excepts.

EXHIBIT "7."

Meeting of the Commission of the Land Office of the State of Oklahoma, Held in the Office of the Secretary at Oklahoma City, Oklahoma, Tuesday, March 12, 1918, at 2 P. M.

Present:

Hon. E. B. Howard, State Auditor, and Acting Chairman.

Hon. R. H. Wilson, State Sup't. of Public Instruction.

Hon. F. M. Gault, President State Board of Agriculture.

Hon. J. L. Lyon, Secretary of State.

Absent:

Hon. R. L. Williams, Governor and Chairman.

The following proceedings among others were had.

Re Oil & Gas. In the matter of advertising certain lands in Stephens and Cotton Counties for lease for oil and gas purposes, after discussion by the Board it was moved by Mr. Gault, and seconded by Mr. Wilson, that T. J. Ellis, Jr., Special Oil Agent Oil and Gas Division, be and he is hereby authorized and directed to advertise all such lands in said Stephens and Cotton Counties for lease for oil and gas purposes, which, in his opinion, should be advertised at this time.

All vote aye. Motion prevailed.

Re Oil & Gas: In the matter of advertising further lands for lease for oil and gas purposes, after discussion by the Board, it was moved by Mr. Wilson and seconded by Mr. Gault, that T. J. Ellis, Jr., Special Agent Oil & Gas Division, be and he is hereby directed to prepare and submit at the next meeting of the Board a list of all lands which, in his opinion, should be advertised for lease for oil and gas purposes, for the consideration of the Board.

All vote aye. Motion prevailed.

Witness my hand and official signature, at Oklahoma City, Oklahoma, on this the 12th day of March, 1918.

(Signed) E. B. HOWARD,

Attest: *State Auditor and Acting Chairman.*

(Signed) A. M. McKINNEY, *Secretary.*

STATE OF OKLAHOMA,
Oklahoma County, ss.:

I, A. S. J. Shaw, the duly appointed, qualified and acting Secretary to the Commissioners of the Land Office of the State of Oklahoma, do hereby certify that the above and foregoing is a true and correct copy of this part of the meeting of the Commissioners of the Land Office at their meeting on the 12th day of March, 1918.

In witness whereof, I have hereunto set my hand and official seal, on this the 1st day of June, 1920.

A. S. J. SHAW,
*Secretary to the Commissioners of the Land
Office of the State of Oklahoma.*

[SEAL]

Mr. Blakeney: Plaintiff now offers in evidence Exhibit "8."

Mr. Sharp: We object to the introduction of Exhibit "8" for the reason that it is irrelevant, incompetent and immaterial; because it was made in pursuance to a statute of the State which is violative of the constitutional rights of the defendants, W. T. Price and his wife, and that any rights exercised by the Commissioners of the Land Office, pursuant to said statute, is without force and not binding upon the defendants in this case.

Court: Objections overruled. Defendants except.

PLAINTIFF'S EXHIBIT "8."

Meeting of the Commissioners of the Land Office of the State of Oklahoma, held in the Office of the Secretary at Oklahoma City, Oklahoma, Wednesday, November 20, 1918, 2:00 P. M.

Present:

Hon. R. L. Williams, Governor of Oklahoma, and Chairman.

Hon. R. H. Wilson, State Sup't. of Public Instruction.

Hon. J. L. Lyon, Secretary of State.

Absent:

Hon. F. M. Gault, President State Board of Agriculture.

Hon. E. B. Howard, State Auditor.

The following among other proceedings were had:

The Commissioners of the Land Office of the State of Oklahoma will receive sealed bids for the leasing of the herein-after described tracts of the public state school lands of the State of Oklahoma for oil and gas purposes. All leases will be made upon sealed bids, to be opened at the office of the Secretary to the Commissioners of the Land Office at the hour of 2 o'clock P. M. on the 31st day of December, 1918, and said leases will be sold and such sales made in accordance with the terms and conditions as hereinafter set out.

The number and description of the tract, among others to be leased by the Commissioners of the Land Office, is as follows, to wit:

Trace No. 162, NE $\frac{1}{4}$ of Sec. 33 Twp. 1S, and Rge. 8 W., Stephens County, Oklahoma.

Witness my hand and official signature, at Oklahoma City, Oklahoma, on this 20th day of November, 1918.

(Signed) R. L. WILLIAMS,
Governor, and Chairman of the Commissioners of the Land Office.

Attest:

(Signed) A. M. McKINNEY, *Secretary.*

STATE OF OKLAHOMA,
Oklahoma County, ss.:

I, A. S. J. Shaw, the duly appointed, qualified and acting Secretary of the Commissioners of the Land Office of the State of Oklahoma, do hereby certify that the above is a true and correct copy of this part of the meeting of the Commissioners of the Land Office at their meeting on the 20th day of November, 1918.

In witness whereof, I have hereunto set my hand and official seal on this 1st day of June, 1920.

A. S. J. SHAW,
Secretary to the Commissioners of the Land Office of the State of Oklahoma.

[SEAL]

Mr. Blakeney: We ask that this paper be marked Plaintiff's Exhibit "9" and we offer this in evidence.

Mr. Sharp: This Exhibit "9" is objected to for the reason it is incompetent, irrelevant and immaterial and for the further reason that same purports to be the action of the Board in deferring the awarding of leases on certain lands advertised as tract No. 162, being the Price land; that such proceedings were had in pursuance of an invalid and unconstitutional statute, and is a denial of the defendant, Price's, rights, both under the enabling act and under both State and Federal Constitution, referring to process and etc.

Court: Overruled. Defendants except.

PLAINTIFF'S EXHIBIT "9."

Meeting of the Commissioners of the Land Office of the State of Oklahoma, held in the Office of the Secretary, at Oklahoma City, Oklahoma, Tuesday, December 31, 1918, at 2:00 P. M.

Present:

Hon. R. L. Williams, Governor of Oklahoma.

Hon. J. L. Lyon, Secretary of State.

Hon. R. H. Wilson, State Supt. of Public Instruction.

Hon. F. M. Gault, President State Board of Agriculture.

Absent:

None.

The following proceedings, among others, was had:

Bid of the Magnolia Petroleum Company, accompanied by certified check in the sum of \$1,000.00. Tract No. 162, \$8,000.

All of said oil and gas bids having been opened and read, it was moved by Mr. Wilson that the awarding of leases under said bids be deferred until 10:00 o'clock A. M., Saturday, January 4th, 1919.

There being no other business at this time, the Board adjourned until 10:00 A. M., Saturday, January 4th, 1919.

(Signed) R. L. WILLIAMS,

*Governor, and Chairman of the Commissioners
of the Land Office of the State of Oklahoma.*

Attest:

(Signed) A. M. McKINNEY,
Secretary.

STATE OF OKLAHOMA,

Oklahoma County, ss.:

I, A. S. J. Shaw, the duly appointed, qualified, and acting Secretary to the Commissioners of the Land Office of the State of Oklahoma, do hereby certify that the above and foregoing is a true and correct copy of this part of the meeting of the Commissioners of the Land Office at their meeting on the 31st day of December, 1918.

In Witness Whereof, I have hereunto set my hand and official seal, on this the 1st day of June, 1920.

A. S. J. SHAW,

*Secretary to the Commissioners of the Land
Office of the State of Oklahoma.*

[SEAL]

Mr. Blakeney: We asked that this paper marked Plaintiff's Exhibit "10" and the same is offered in evidence.

Mr. Sharp: The same objections will be urged to No. 10 as to No. 9 and the further objection that the instrument shows on its face not to be complete within itself, but refers to other pages, to wit: 406-409 of some other record, which are not made a part of the exhibit.

Court: Overruled. Defendants except.

PLAINTIFF'S EXHIBIT "10."

Meeting of the Commissioners of the Land Office of the State of Oklahoma, held in the Office of the Secretary, at Oklahoma City, Oklahoma, Saturday, January 4, 1919, at 10:00 A. M.

Present:

Hon. R. L. Williams, Governor of Oklahoma.

Hon. J. L. Lyon, Secretary of State.

Hon. F. M. Gault, President State Board of Agriculture.

Hon. R. H. Wilson (present during latter part of meeting),
State Supt. of Public Instruction.

Absent:

Hon. E. B. Howard, State Auditor.

The following proceedings, among others, were had:

In the matter of the consideration of the oil and gas bids which were opened pursuant to advertisement December 31st,

1918, a tabulation of said bids by the Oil & Gas Division was presented to the Board, together with the report of the Special Agent, W. A. Durant, regarding adjacent development for oil and gas purposes and the general values prevailing in the neighborhood of the respective tracts, which said report was read to the Board by Mr. Durant, in the case of each tract considered; the detailed bids, together with the tract numbers and descriptions having been received and opened (page 406-409) and said bids now coming on for consideration by the Board pursuant to adjournment the following proceedings were had, to wit:

Re Tract No. 162: It was moved by Mr. Wilson and seconded by Mr. Gault that the Magnolia Petroleum Company be awarded oil and gas lease under its oil and gas bid upon Tract No. 162.

Mr. Gault, "Aye"; Mr. Lyon, "Aye"; Mr. Wilson, "Aye"; Governor Williams, "No." Motion prevailed.

Witness my hand and official signature, at Oklahoma City, Oklahoma, on this the 4th day of January, 1919.

(Signed) R. L. WILLIAMS,
*Governor, and Chairman of the Commissioners
of the Land Office of the State of Oklahoma.*

Attest:

A. M. McKINNEY,
Secretary.

STATE OF OKLAHOMA,
Oklahoma County, ss.:

I, A. S. J. Shaw, the duly appointed, qualified and acting Secretary to the Commissioners of the Land Office of the State of Oklahoma, do hereby certify that the above and foregoing is a true and correct copy of this part of the meeting of the Commissioners of the Land Office at their meeting on the 4th day of January, 1919.

In Witness Whereof, I have hereunto set my hand and official seal, on this the 1st day of June, 1920.

A. S. J. SHAW,
*Secretary to the Commissioners of the Land
Office of the State of Oklahoma.*

[SEAL]

Mr. Blakeney: We ask to have this instrument marked Plaintiff's Exhibit "11" and as it is the original file of the School Land Department, we ask we be permitted to withdraw the original and introduce a substitute copy, and we offer the Exhibit "11" in evidence.

Mr. Sharp: No objections.

PLAINTIFF'S EXHIBIT "11."

(Same as "Exhibit E" to Defendant's Answer to Amended Petition [Record p. 56].)

PLAINTIFF'S EXHIBIT "12."

Mr. Blakeney: We ask to have this instrument marked Plaintiff's Exhibit "12," and offer it in evidence.

Mr. Sharp: No objections.

(Same as "Exhibit C" to Plaintiff's Amended Petition [Record p. 54].)

Mr. Blakeney: Plaintiff rests at this time.

O. B. SURBER, being called as a witness for the defendants, and after being first duly sworn, to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. Boys:

Q. Your name is O. B. Surber?

A. Yes, sir.

Q. You live in Chickasha, Oklahoma?

A. Yes, sir.

Q. You formerly lived in this county?

A. Yes, sir; used to live here.

Q. Did you own a school lease in Section Thirty-three (33)?

A. Yes, sir.

Q. This county?

A. Yes, sir.

Q. Did you have a preference right in that section or buy from another party?

A. Bought from another party.

Mr. Blakeney: We object to that unless it relates to this lease in Section Thirty-three (33).

Court: Overruled. Plaintiff excepts.

Q. What quarter section, in Section Thirty-three (33), Township One (1) South, Range Eight (8) West, did you have a lease on?

Mr. Blakeney: Object to that, not being the tract in controversy and being no way related to this lease.

Court: Overruled. Plaintiff excepts.

A. Southwest quarter.

Q. Was that put up at any time and sold in this county, in 1911?

Mr. Blakeney: Objected to irrelevant, incompetent and immaterial.

Court: Overruled. Plaintiff excepts.

A. Yes, sir.

Q. Did you attend that sale, personally?

Mr. Blakeney: We object to that; irrelevant and immaterial.

Court: Overruled. Plaintiff excepts.

A. Yes, sir.

Q. Did you purchase your land at that land sale?

Mr. Blakeney: We object to that; irrelevant and immaterial.

Court: Overruled. Plaintiff excepts.

A. Yes, sir.

Q. I'll ask you to state, Mr. Surber, whether or not all the land that was advertised and sold was bought by lessees?

Mr. Blakeney: We object to that; irrelevant and immaterial and not the best evidence.

Court: Overruled. Plaintiff excepts.

Q. I refer, of course, to the land in this county?

A. Yes, sir; so far as I know, the lessees bought it.

Mr. Blakeney: We move to strike the answer; the witness shows he is incompetent to answer.

Court: Overruled. Plaintiff excepts.

Q. Did they purchase it at par value?

Mr. Blakeney: Objected to; witness shows he is not a competent witness to answer that.

Court: Overruled. Plaintiff excepts.

A. They did, except one farm.

Mr. Blakeney: We move to strike out the answer of the witness for the reason it is irrelevant and immaterial and witness not qualified to answer.

Court: Overruled. Plaintiff excepts.

Q. At the time of that sale, Mr. Surber, was any of that land in Section Thirty-three (33) or in that vicinity, known in that community, known to you people as being valuable for oil and gas purposes?

Mr. Blakeney: We object to that; witness is incompetent to answer.

Court: Overruled. Plaintiff excepts.

A. No, sir; not that I know of.

Mr. Blakeney: We move to strike the answer from the record; the witness shows to be incompetent.

Court: Overruled. Plaintiff excepts.

Q. Was there any land in that vicinity known to you people as being valuable for oil and gas, up to the year of 1915?

Mr. Blakeney: We object to that question for the reason it is irrelevant, incompetent and immaterial.

Court: Overruled. Plaintiff excepts.

A. I don't think that was known.

Mr. Blakeney: We object to that as irrelevant, incompetent and immaterial.

Court: Overruled. Plaintiff excepts.

Q. You had no knowledge of it yourself?

A. No, sir.

Q. Have you, since you purchased the land, executed an oil and gas lease on your land?

Mr. Blakeney: We object to that as immaterial.

Court: Overruled. Plaintiff excepts.

A. Yes, sir.

Q. They are now producing oil and gas from your land?

Mr. Blakeney: We object for the reason it is not material.

Court: Overruled. Plaintiff excepts.

That's all.

Mr. Blakeney: No questions.

Witness excused.

W. T. PRICE, being called as a witness for the defendant, and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. Boys:

Q. You may state your name?

A. Price, W. T.

Q. Where do you live?

A. Stephens County, Oklahoma.

Q. What tract of land in Stephens County, Oklahoma, do you live on?

A. Section Thirty-three (33).

Q. Township One (1) South, Range Eight (8) West, the land in controversy?

A. Yes, sir.

Q. Of whom did you purchase that lease?

A. L. B. DeArman.

Q. When; what date did you purchase it, approximate?

A. Fall of 1908; I don't know exactly what date it was.

Q. At that time what did you pay him for it; what was your trade, or purchase?

A. \$2,050.00.

Q. Were there any deferred payment on that?

A. Yes, sir.

Q. How much?

A. \$500.00.

Q. When was that to be paid?

A. Next October 1st; October 1st, 1909.

Q. Did you pay that note at that time?

A. Yes, sir.

Q. Did he execute to you a relinquishment at that time?

A. Yes, sir.

Q. About when did he execute that relinquishment, with reference to the time you paid your note?

A. Must have been something like a couple of weeks. I know when I went to the bank; my note was at the bank and I wanted to pay it off and I asked for my note to Mr. DeArman; I was doing business at the First National Bank and Mr. Prentice in the bank said that Mr. DeArman had it with him and I left it with him to pay it.

Q. Did you secure a relinquishment later?

A. Yes, sir; in a week or two weeks it finally come when we found Mr. DeArman; he was in Texas; nobody knew where he was.

Q. What did you do with the relinquishment?

A. I sent it to Guthrie.

Q. To the Commissioners of the Land Office?

A. Yes, sir.

Q. Did you hear any more from that relinquishment?

A. At that time the land was appraised the year before. The appraisement wasn't satisfactory on our improvements.

Q. Did you hear any more about the relinquishment at that time?

A. No, sir; not a thing.

Q. Now, when you went on the land was the land appraised in 1909?

A. Yes, sir.

Q. Were you home when the appraisers were there?

A. No, sir.

Q. Remember where you were?

A. Yes, sir.

Q. Where?

A. Comanche.

Q. Your family was there?

A. Yes, sir; part of them; most of them what wasn't off at school.

Mr. Boys: The defendants now offer in evidence a certified copy of the Relinquishment from DeArman to W. T. Price, marked by the stenographer, Exhibit "A," same as "Exhibit F" attached to Defendant's Answer to Amended Petition (Record p. 57):

Mr. Blakeney: Objected to as irrelevant, incompetent and immaterial.

Court: Overruled. Plaintiff excepts.

Exhibit "A" is received in evidence and marked same by the Court Reporter.

Q. Do you have a copy of the appraisement made on those lands for the year 1909?

A. No, sir.

Q. What part of the year was that made, if you remember?

A. 1909.

Q. What part?

A. Early in the spring, along about the first of the year; I don't remember the exact date it was.

Mr. Boys: We now offer in evidence a certified copy of the appraisement as same appears on file in the office of the Commissioners of the Land Office, made upon the land in controversy, January 12th, 1909, and asks that the same be marked Defendant's Exhibit "B" by the stenographer.

Mr. Blakeney: To which we object as irrelevant, incompetent and immaterial.

Court: Overruled. Plaintiff excepts.

DEFENDANTS' EXHIBIT "B."

Defendants' Exhibit "B" is received in evidence and the same is in words and figures as follows, to wit:

Appraisal of School Lands.

NE Qr. of Sec. 33, Tp. 1 S., of R. 8 W., Stephens County (160 acres).

R. T. Price, Lessee; William T. Click, P. O. Comanche.

1. Topography, slightly rolling. Soil medium to good—sandy loam; good cotton land.

2. Acres prairie 90; bottom (----1st----2nd) slope East Upland, 160 Overflow-----Kind of prairie pasture—sage grass.

3. Acres timber 70 Bottom-----Upland-----kind of timber pasture Sage.

4. Kind and quality of timber. Post Oak P. B. Jack.

5. How much former timber land now under cultivation? 70 acres.

6. How much stony land? None. How much of it is good pasture?-----

7. Kind and quality of stone?-----

8. Have stone quarries, sand or cement beds been opened? No.

9. Any gypsum, cement, salt, mineral gas or oil? No.

10. Is land adjacent to minera., gas or oil production? No.

11. Additional acres advisable to cultivate? No.

12. Is tillable land in patches? No. How many?-----

13. Springs, water, streams, etc. East dry creek.

14. Distance from market $8\frac{1}{2}$ miles to Comanche; kind of roads? Fair.

15. Any timber land advisable to clear? No.

16. Any acreage tracts?----- Any public parks?----- Any burial places?-----

17. Any public roads or highways through land? No. Make design on plat.

18. Any railroads through land? No.

19. Give mileage, width of right of way, and make design on plat-----

20. How much land suitable for townsite purposes? None.
 21. How much land already used for townsite purposes? None.
 22. Will this land bring more for townsite purposes than for agricultural purpose?-----
 23. Is lessee bona fide resident of the State? Yes. Does he reside on land? Yes.
 24. How many children of lawful age has lessee? None.
 25. Does lessee own land in excess of one quarter section? No.
 26. Does lessee hold more than one quarter section? No.
 27. How much does lessee pay for lease? Do not know.
 28. Name of tenant?-----
 29. How much per acre does tenant pay lessee?-----\$-----
 30. Is neighborhood well settled? Yes.
 31. What class of people? A. American.
 32. How far from school house? 1½ miles.
 33. How is land cared for? Very well.
 Actual cash value of land, \$3,000.00.

Improvements.

Value

- Any improvement other than fencing and tillage? Yes.
 How long have improvements been made? 2 to 6 years.
 House (give size, how built and when finished) 16x32 box E. 22-24, built 1904, \$500.00. Smoke house 10x12, \$30.00. Poultry house, 8x10, \$15.00.
 Barn or stable (give size, how built) Barn 14x26 box, \$100.00. Crib and shed 16x30, \$100.00. Hay shed 10x18, \$40.00.
 Wells (give depth and description). One, drilled, 50 feet, \$25.00.
 Cisterns (give depth and description). None.
 Fences (give amount and kind). 640 rods of 3-wire, \$100.00.
 Fruit trees (give number, kind and age). 600 apple, 4 years old, \$300.00. 88 peach, 4 years, \$44.00. 60 grapes, \$44.00.
 Ornamental trees (give number, kind and age). None.
 Acres under cultivation, 90.
 Give how long broken, 2 to 6 years.
 Windmills. One, \$50.00. Tanks, none. Cellars, 8x10. reservoirs, none, \$50.00, \$15.00.
 Stone or cement sidewalk-----

Other improvements (give in detail). Tenant house, 14x28, box shed 10x28, \$200.00; barn 14x16 box, \$30.00; 30 rods of 26-in. hog wire \$6.00; one well dug 10 ft, \$10.00; cellar 8x10, \$10.00.

Total cash value of improvements, \$1,290.00.

Total cash value of land and improvements, \$4,290.00.

Amount of corn, cotton and other products raised during 1907? Do not know.

Amount of corn, cotton and other products raised during year 1908? Do not know.

Remarks. There is three acres of alfalfa in N. E. corner.

Notified lessee of appraised value of improvements-----
190__.

We hereby certify on honor and under our official oaths, that we have personally inspected the foregoing tract of land and improvements thereon, and that the above and foregoing statement and appraisalment is true, fair, correct and just according to our best judgment and belief.

Dated Jan. 12th, 1909.

J. L. FOSTER,

J. M. LOVELL,

J. A. BYERLY,

Appraisers.

I, E. P. Bryan, duly elected, qualified and acting Secretary to the Commissioners of the Land Office of the State of Oklahoma, and custodian of the records of said Commissioners, hereby certify that the attached copy of appraisalment is a true and correct copy of the appraisalment covering the NE 33, 1S, 8W, now on file in the office of said Commissioners.

Witness my hand and official signature at Oklahoma City, Oklahoma, on this the 27th day of November, 1920.

E. B. BRYAN,

*Asst. Secretary to the Commissioners of the
Land Office of the State of Oklahoma.*

[SEAL]

Mr. Boys: Defendants now offer in evidence certified copy of the minutes of the Commissioners of the Land Office under date of March 25, 1909, and ask that the same be marked defendants' Exhibit "C."

Mr. Blakeney: Plaintiff object as irrelevant, incompetent and immaterial.

Court: Overruled. Plaintiff except.

Defendants' Exhibit "C" is received in evidence and is in words and figures as follows, to wit:

From the Minutes of the Meeting of the Commissioners of the Land Office of the State of Oklahoma, Held March 25th, 1909, at 2:00 P. M.

In the matter of the appraisement of school lands as provided by Art. 2, Chapter 49, of the Laws of 1907-08, commonly known as House Bill 414, the Sub-Committee of the Commissioners at a regular meeting to confer with the Secretary in examining into the work, beg leave to report as follows:

"That in connection with the Secretary, we have made a general examination of the appraisement above referred to and we recommend that all of the appraisements be approved excepting the report on the SW $\frac{1}{4}$ and SE $\frac{1}{4}$ of Sec. 33, Twp. 28 N., R. 20 W., and that the report on these two quarters be rejected and the Secretary ordered to re-appraise the same."

It was moved by Mr. Cameron and seconded by Mr. Cross that the report of the Committee and the recommendations of the Secretary be adopted and that the said appraisement with the exception of the two above described tracts of land, be declared the official appraisement.

Those voting "Aye"—Haskell, Cross and Cameron.

Those voting "No"—None.

Motion prevailed.

I, A. S. J. Shaw, the duly qualified and acting Secretary to the Commissioners of the Land Office of the State of Oklahoma, do hereby certify that the above and foregoing is a full, true, and correct copy of that part of the minutes of the meeting of the Commissioners of the Land Office, held March 25th, 1909.

A. S. J. SHAW,

Secretary to the Commissioners of the Land Office.

[SEAL]

Q. Now, did you at any time perfect an appeal from the appraisement that was made in 1909?

Mr. Blakeney: Objected to as irrelevant, incompetent and immaterial.

Court: Overruled. Plaintiff excepts.

A. No, sir.

Q. Did you ever perfect an appeal from that appraisal to the District Court of Stephens County?

A. No, sir.

Q. You have not appealed and you have no appeal pending at this time from these appraisements that affected this land?

Mr. Blakeney: We object; irrelevant, incompetent and immaterial.

Court: Overruled. Plaintiff excepts.

A. No, sir; none whatever.

Q. Now, Mr. Price, you are still living on that farm?

A. Yes, sir; staying out there.

Q. You and your family?

A. Yes, sir.

Q. Of what does your family consist?

Mr. Blakeney: Objected to as irrelevant, incompetent and immaterial.

Court: Overruled. Plaintiff excepts.

A. I have three children at home.

Q. You have resided on that land since you went on it in 1908, and are still residing there, and have claimed that as your home and are still claiming it as your home at this time?

Mr. Blakeney: Objected to as irrelevant, incompetent and immaterial.

Court: Overruled. Plaintiff excepts.

A. Yes, sir.

Q. What did you purchase from Mr. DeArman at the time you purchased the property out there?

Mr. Blakeney: We insist that is not the best evidence; the written assignment shows what he purchased.

Q. Was your first contract of purchase with Mr. DeArman, in writing?

A. Yes, sir.

Q. The first deal; when you first purchased?

A. No, no.

Q. What did you purchase from Mr. DeArman, at the time you purchased from him?

Mr. Blakeney: We object to that as the other agreement would be merged into the written agreement and would be the best evidence.

Court: If there was a written agreement that would be the best evidence; my understanding is there was no written agreement. Let the objections be overruled. Plaintiff excepts.

A. Well, I bought what Mr. DeArman had out there; I bought his preference right and his improvements.

Mr. Blakeney: We move to strike out that part with reference to the preference right as being a conclusion of law.

Court: Let that be sustained; don't know what a preference right is myself. Defendants except.

A. I bought the improvements he had out there.

Q. What were those improvements?

A. Well, all he had out there; there was three or four barns.

Mr. Blakeney: We object; immaterial what he bought.

Court: Overruled. Plaintiff excepts.

A. Orchard, two sets of improvements, house, two wells, wind mill.

Q. How many trees were set out on the place at that time?

Mr. Blakeney: We object to that as immaterial.

Court: Overruled. Plaintiff excepts.

A. Something like 800.

Q. How old were those trees, approximately, at that time?

A. 500 of them was a year old.

Q. Did you put on any more improvements from the time you bought the lease from DeArman, up to 1915?

A. Very little; when one tree would die I would set out another.

Q. Did you out any other improvements, except to repair what was there?

A. Yes, sir.

Q. Just what were they?

A. Weatherboarded the house and painted it, put in overhead water, built fences, pulled stumps on the place and kept the place up.

Q. Were there another appraisalment made of your place after the 1909 appraisalment?

Mr. Blakeney: We object to that as immaterial.

Court: Overruled. Plaintiff excepts.

A. Yes, sir.

Q. What year was that?

A. 1920.

Q. Were there one before that?

A. Must have been in 1915.

Q. Have you a copy of that appraisalment?

A. No, sir; I haven't.

Mr. Boys: We now offer in evidence a certified copy of the appraisalment of the land in controversy found in the files of the Office of the Commissioners of the Land Office, made 30th day of August, 1915, and ask that the same be marked Defendant's Exhibit "D" for identification.

Mr. Blakeney: We object for the reason it is irrelevant, incompetent and immaterial.

Court: Overruled. Plaintiff excepts.

Exhibit "D" is received in evidence and is in words and figures as follows, to wit:

Appraisalment of School Lands, Stephens County.

NE Qr. of Sec. 33, Twp. 1 South, R. 8 West, 160 acres.

Lessee Wm. T. Price. P. O. Comanche, R. F. D. 4.

This plat represents 160 acres.

Key to Plat.

Railway. -----

Streams. -----

Draws. xxxxxxxxxxxxxx

Spring S

House ()

Orchard oooooooooooooooooo

Pond P

Timber TTTTTTTTTT

Ledge of stone

Quarry))))))))

Public wagon road -----

TOPOGRAPHY

Rolling

Make a complete map of the land showing the location of improvements on the plat using the "Key."

1. Character, quality and depth of soil? Dark sandy soil 10 in. deep. Depth and character of sub-soil? Clay.
2. Is there any sand, shale, hardpan, gravel, alkali or Johnson grass? Describe fully, giving number of acres of same? No.

3. Any waste land? Yes. If so, how many acres? About 10 acres. (Show draws and canyons on plat.)
4. Is rock close to surface? Yes. Number of acres in this condition? About 25 acres.
5. If any cultivated lands were cleared and grubbed from brush, timber and stone, describe the extent and character of labor in preparing the same for cultivation. Yes, about 110 acres grubbed at cost of \$2.00 per acre.
6. Acres of prairie?----- Upland prairie-----
Prairie bottom?-----
(Show number of acres of upland or prairie bottom)
7. Does land overflow? Yes. State to what extent-----
Any improvements to protect the land from overflow?
If so, describe-----none-----
8. Acres of timber land? 40 acres of timber land (Give number of acres bottom or timber upland).
9. Kind and quality of pasture? Not very good—prairie grass.
10. How much timber land now in cultivation? None.
11. How much stony land? None. Kind and quality of stone? None.
12. How much land in cultivation? 110 acres—is tillable land in patches? Yes. If so, how many?-----3-----
Additional acres advisable to cultivate? None.
13. Estimate cost per acre of placing same in cultivation?---
14. State kind of vegetation growing on uncultivated land, kind of grass, timber or shrubbery, etc-----Prairie grass, post oak and black jack—some cotton wood and elm on dry branch.
15. If any lands not advisable to cultivate, can same be used for pasture? Yes. If so, what kind of pasture? Not very good.
16. State kind and quantity of timber. None except as above stated.
17. Any streams, natural lakes, ponds or springs? Yes. If so, describe. Dry Branch runs through the eastern side of farm.
18. Distance from market? 9 miles to Comanche and Duncan. Kind of roads? Good.
19. Any public parks or burial places? No. If so, describe. None.

20. Any school or church houses on land? No.
21. How much land suitable for townsite purposes? None.
22. Will this land bring more for townsite purposes than for agricultural purposes? No.
23. Does lessee reside on land? Yes. How far from school house? $1\frac{1}{2}$ miles.
24. Is neighborhood well settled? Yes. What class of people? White.
25. What crops raised in 1913 and 1914? Corn and cotton in 1913 and corn, cotton and oats in 1914.
Yield? Made 15 bu. corn, $\frac{1}{4}$ of a bale of cotton per acre in 1913 and 20 bu. corn, 1-3 of a bale of cotton and 25 or 30 bushels oats per acre in 1914.
26. What crops are growing on lands now? Cotton, corn and maize.
27. State condition of crops? Good.
28. Actual cash value of land? \$2,500.00.

Improvements.

Dwellings (describe fully) dwelling 16 ft. x 12 ft. with ell 14 ft. x 20 ft x 9 ft., boxed and shingle roof, 6 rooms and ceiled and papered; 2 rooms up stairs and 4 rooms down stairs, and 2 porches, \$600.00. Dwelling 28 ft. x 28 ft., boxed and shingle roof—4 rooms, \$250.00.

Condition now -----

Age ----- Value \$850.00

Barns (describe fully): Hay barn 14 ft. x 28 ft. x 7 ft., boxed and shingle roof, \$100.00. Barn and Granary combined, 14 ft. x 28 ft. x 6 ft. on side and board roof, \$65.00. Cow barn, 10 ft. x 10 ft. x 12 boards and board roof—loft for hay, \$50.00. Barn 22 ft. x 20 ft. x 10 ft., boxed and shingle roof, no value.

Condition now ----- Value \$215.00

Shed (describe fully) ----- condition now? ----- Age -----
Value \$-----

Granaries (describe fully) ----- Condition now? -----
Age ----- Value \$-----

Chicken Houses (describe fully): Chicken house 8 ft. x 24 ft. x 5 ft. boxed and shingle roof -----

Condition now ----- Age ----- Value ----- \$25.00

Closets, etc. (describe fully) ----- Condition now -----
Age ----- Value \$-----

Windmills, pumps and tanks (describe fully) ----- One 30 ft. tower and wind mill with 8 ft. wheel, \$60.00; one tank \$25.00;

one tank, \$20.00; one pump and 100 ft. pipe 1 1/4 in., \$20.00.

Condition now----- Age----- Value----- \$125.00

Fencing (describe fully): 1,060 rods barbed wire fence, 3 wire, and 200 rods woven wire hog fence, 32 in. high.

Condition now----- Age----- Value----- \$350.00

Drainage and irrigation ditches and artificial ponds (describe fully)----- Are same in useful condition now?

If same are in useful condition, what was the actual cost of construction? -----

Wells (describe fully): 1 bored well 33 ft. deep; 1 dug well 12 ft. deep. Value \$50.00.

Orchard (describe fully): 800 apple trees, 16 peach trees, 8 pear trees and 24 plum trees.

What is the present condition? Very good. Fair and reasonable value, \$800.00.

Describe fully, berries and small fruits----- Fair and reasonable value \$-----

Alfalfa and tame grass (describe fully) giving number of acres and yield per acre 1913, 1914-----

Condition----- Value \$-----

Miscellaneous: Smoke house 10 ft. x 12 ft. x 8 ft., boxed and shingle roof, \$40; hog crib 8 ft. x 8 ft. x 5ft., \$5.00; fair and reasonable value, \$45.00.

Cisterns, Cellars, Caves, Storm House, and Improved Springs (describe fully): One cave 6 ft. x 8 ft. 6 in., logs and dirt, \$20.00; one cave 8 ft. x 8 ft. x 7, logs and dirt, \$10.00. Are same in useful condition now? If same are in useful condition, what was the actual cost of construction? \$30.00.

Number of acres of land in cultivation at present time?----

What allowance should be made per acre for placing land in cultivation----- Timber----- Acres \$-----per

acre in cultivation----- years \$----- Brush-----

110----- acres \$2; grubbing 2----- Breaking per acre, in culti-

vation----- years \$----- Prairie----- Acres-----

\$----- per acre, in cultivation----- years

\$----- rocky----- acres \$-----

per acre, in cultivation----- years \$-----

Total for placing land in cultivation----- \$440.00

Total value of improvements----- \$2,930.00

Value of land----- \$2,500.00

Value of improvements----- \$2,930.00

Respectfully submitted, this 30th day of August, 1915.

T. C. CRENSHAW,

A. E. RAY,

GEORGE W. LEWIS,

Appraisers

I, the above named lessee, hereby accept the appraisalment and report, subject to the confirmation of the Commissioners of the Land Office.

W. T. PRICE,

Lessee.

I, A. S. J. Shaw, duly elected, qualified and acting Secretary to the Commissioners of the Land Office of the State of Oklahoma, and custodian of the records of said Commissioners, hereby certify that the attached copy of appraisalment is a true and correct copy of the appraisalment covering the land NW 33, 1S 8W, now on file in the office of the Commissioners of the Land Office.

Witness my hand and official signature at Oklahoma City, Oklahoma, on this the 30th day of November, 1920.

A. S. J. SHAW,

*Secretary to the Commissioners of the Land
Office of the State of Oklahoma.*

[SEAL]

Q. You accepted that appraisalment, did you not?

Mr. Blakeney: We object to that; irrelevant, incompetent and immaterial. And in addition the appraisalment shows that it is purely one for fixing the rental value of the land and made every five years for the purpose of fixing the rental value of the land and, under the law, the acceptance would have to be in writing.

Court: Overruled. Plaintiff: Exceptions.

A. Yes, sir.

Q. You did execute a lease in 1913, did you not?

A. Yes, sir, I think I did.

Q. You can't read, can you, Mr. Price?

A. No, sir.

Mr. Blakeney: We move to strike out that question whether he can read or not; no allegation here of any fraud and would be incompetent in this matter.

Court: Overruled. Plaintiff: Exceptions.

Q. Did you have any instrument—did you receive any instrument in writing from the School Land Board, from the time you sent the relinquishment in, in October, 1909, up to the time the lease was signed in 1913?

A. I wrote them when I sent them papers in what my improvements was appraised at.

Mr. Blakeney: We object to him stating the conversation in the letter as not the best evidence.

Court: Sustained.

Q. I am asking you whether you had a lease from the School Board, in writing, from the time you sent the relinquishment in up to 1913?

A. Not a one.

Q. Did you or not expect the land to be sold in the 1911 sale?

Mr. Blakeney: We object to that as irrelevant, incompetent and immaterial, as to what he expected.

Court: Objections sustained. Defendants excepts.

Q. Did you at any time; did you at all times insist that this land be sold.

Mr. Blakeney: We object to that; reason, it's immaterial.

Court: Overruled. Plaintiff excepts.

A. Yes, sir.

Q. Did you have any conversation with the appraisers at the time the appraisement was made in 1915, as to whether or not, under this appraisement, the land would be sold?

Mr. Blakeney: We object to that; irrelevant, incompetent and immaterial; hearsay and was not made by a person authorized to make a sale of the lands.

Court: Overruled. Plaintiff excepts.

A. Yes, sir.

Q. What statement, if any, did the appraisers make when they made the appraisement in 1915, whether that was an appraisement for sale purposes?

Mr. Blakeney: We object to that as hearsay and it is not shown that these appraisers had any authority whatever, by any statement made, to bind the State.

Court: Objections sustained. Defendants excepts.

Q. Mr. Price, at the time you accepted the 1915 appraisement, did you sign that under the representations made to you

at the time, that the land would be put up for sale on that appraisalment?

Mr. Blakeney: We object to that as irrelevant, incompetent and immaterial; they have introduced the acceptance and cannot impeach it.

Court: Objections sustained. Defendants except.

Q. Was your consent given to the 1915 appraisalment for the purpose of a sale of the land involved in this action?

Mr. Blakeney: We object to that as irrelevant, incompetent and immaterial.

Court: Sustained. Defendants except.

Q. Have you been ready, able and willing at all times, since the passage of the act of 1909, authorizing Section Thirty-three (33) to be sold, to buy this land?

Mr. Blakeney: We object to that as irrelevant, incompetent and immaterial.

Court: Overruled. Plaintiff excepts.

A. Yes, sir.

Q. Did you go to the office of the Commissioners of the Land Office, some time during the first part of the year of 1920?

A. Yes, sir.

Mr. Boys: I don't think, if the court please, that I will go into this at this time unless the depositions of Mr. Stine are introduced in evidence.

Q. Mr. Price, you have paid the rentals on this farm since you have been on the place, have you not, with the exceptions of the year 1920?

Mr. Blakeney: We object to that, if the court please, as irrelevant, incompetent and immaterial; this is not an action to collect rentals and the rentals are not involved in this action.

Court: Overruled. Plaintiff excepts.

A. Yes, sir.

Q. When was your note due for 1920?

Mr. Blakeney: We object to that as irrelevant, incompetent and immaterial.

Court: Overruled. Plaintiff excepts.

A. Fifteenth (15th) of October, 1920.

Q. That has not been paid?

A. No, sir.

Q. Are you willing, if the court should decree, that you pay this rental, to pay it?

A. Yes, sir.

Q. Do you remember receiving from the Commissioners of the Land Office, about 1st day of Jan. 1916, for execution, a lease with some notes?

Mr. Blakeney: We object to that; irrelevant, incompetent and immaterial.

Court: Overruled. Plaintiff excepts.

A. I don't recollect.

Q. Did you execute any additional lease after the lease which has been offered in evidence, Jan., 1916, and the extension certificate, after that?

Mr. Blakeney: We object as irrelevant, incompetent and immaterial.

Court: Objections overruled. Plaintiff excepts.

A. No, sir.

Q. Have you received a lease recently, a blank form to be executed?

Mr. Blakeney: We object to that; irrelevant, incompetent and immaterial.

Court: I don't think that is material at this time.

Mr. Boys: Defendants offer to prove that during the pendency of this action the Commissioners of the Land Office have mailed a lease form to the witness for execution, together with promissory notes for the five year period, beginning January 1st, 1921, in which lease form it is provided that the witness has the preference right to purchase the land in controversy.

Mr. Blakeney: We object to that as irrelevant, incompetent and immaterial.

Court: Sustained. Defendants except.

Q. I hand you an envelope bearing post mark Oklahoma City, Oklahoma, date February 17th, 1921, addressed to W. T. Price, Comanche, Oklahoma; is that the envelope you received in this matter?

A. Yes, sir.

Q. I now hand you a letter marked by the stenographer Exhibit "G"; is that the letter you received in that envelope?

A. Yes, sir.

Q. I now hand you what purports to be a lease blank filled

out and ready for execution, on the land in controversy, and ask you if that was received by you through the United States mail, from the Commissioners of the Land Office?

A. Yes, sir.

Q. I now hand you what purports to be five (5) notes with the blanks filled out ready for execution, and ask you if those notes were received by you, and came in that same envelope?

A. Yes, sir.

Q. Did you receive this envelope in this same envelope?

A. Yes, sir.

Mr. Boys: We now offer in evidence the envelope, letter, notes, lease and return envelope, for the purpose of showing that the Commissioners of the Land Office are yet recognizing Mr. Price as a preference right lessee.

Mr. Blakeney: We want to object to that; the lease shows no such provision.

Court: When a case is tried before the court, without a jury, I am always liberal about letting in evidence; some judges may differ from me, but I don't think this is vital or material. Let the objections be overruled.

Mr. Blakeney: To which the plaintiff excepts.

DEFENDANTS' EXHIBIT "E."

Application No. 1497.

Preference Right Lease

Defendant's Exhibit "G."

Lease and Land Division

Commissioners of the Land Office

State of Oklahoma.

Make all remittances payable to A. S. J. Shaw

Secretary. Personal Checks not accepted

Oklahoma City.

Dear Sir:

We enclose herewith preference right lease, both copies to be signed by you and returned to this department.

This lease is not yet recorded in your name, but after you have signed lease and note and returned them to this department, provided other conditions of law have been complied

with, the Commissioners of the Land Office will approve this transfer and it will be recorded on our lease records.

After the proper authorities have signed in behalf of the State of Oklahoma, we will then mail you your copy of the lease.

Yours truly,
A. S. J. SHAW, *Secretary.*

Q. Did you say to them during any of these conversations that you didn't want that land to sell?

A. No, sir, I didn't.

Q. What did you say about the sale of this land?

A. Well, they came to see three times; they first sent a boy out there, said they wanted to go down in the cotton patch and put down a stob for a location and I said are you ready to pay and they said No, we can't pay for it; just some boys, said, Do you know Mr. Talley; and I said certainly; well, they said, you will have to see Mr. Talley. I said, No, Mr. Talley will have to see me. Mr. Talley brought his wife out there and she entertained my wife and we sit down on the gallery and talked.

Q. What did you say with reference to the sale, or wanting the land sold to these gentlemen; that is the question I asked?

A. I told them I always wanted it sold and they wouldn't sell it.

Q. You heard their testimony?

A. Yes, sir.

Q. They testified concerning some conversation you had with them about the sale of this land, not wanting it to sell?

A. They were mistaken just there; they were right and wrong, they just got the wrong sow by the ear, they got it wrong.

Q. Just explain?

A. Where they got it wrong, when I said I didn't want to sell, I said I didn't want to sell under that appraisement on my improvements; I said there were two men who were arranging to buy this place in if I signed this up, and when their adjusters came around I told them I wasn't willing to sell the way my improvements were appraised.

Q. You meant they were not high enough?

A. I know they wasn't; they wasn't half high enough.

Q. Now, your mental attitude was back in 1909?

A. Yes, sir.

Q. And they supposed you were talking about a later date?

A. Yes, sir, suppose so. I was willing to pay the other man's price for it.

Q. And you didn't take any appeal from that?

A. No, sir.

Q. Good many lessees let their land go?

Mr. Blakeney: Objected to; irrelevant, incompetent and immaterial.

Court: Sustained. Defendants except.

Mr. Boys: I believe that's all.

Mr. Blakeney: That's all.

Mr. Boys: We offer in evidence paragraph Three (3) of the Stipulation of Facts.

Mr. Blakeney: To which we object for the reason irrelevant, incompetent and immaterial.

Court: Overruled. Plaintiff excepts.

(Paragraph 3)

The said land was leased by the duly constituted Board for leasing public lands during Oklahoma Territory days in accordance with the rules and regulations then duly promulgated, and by due and regular conveyance of right, possession and improvements passed from lessee to lessee down to and inclusive of L. P. DeArman, lessee.

Defendants now offer in evidence paragraph Four (4) of the Stipulation of Facts.

Mr. Blakeney: We object to paragraph Four (4) for the reason it's incompetent, irrelevant and immaterial.

Court: Overruled. Plaintiff excepts.

(Paragraph Four)

That the said described land with other lands was reserved for the use of the Territory of Oklahoma and for the future State of Oklahoma by the President of the United States and by Act of Congress approved June 6, 1900, 31 Stat. at L. 680. That it is included within the common designation of public lands of the State of Oklahoma, that by Act of Congress of June 16, 1906, known as the "Enabling Act," the said lands were granted to the State of Oklahoma upon the conditions, limitations and covenants with respect to their control, disposition and sale therein set out. And, that the peo-

ple of the State of Oklahoma in Constitutional Convention assembled, irrevocably accepted the grant of said lands.

“For the uses and purposes and upon the conditions, and under the limitations for which the same are granted and donated, and the faith of the State is hereby pledged to preserve such lands and moneys, and all moneys derived from the sale of any of said lands as a sacred trust and to keep the same for the uses and purposes for which they were donated or granted.”

as set out in Section 1, Article 11 of the Constitution of the State of Oklahoma.

Mr. Boys: Defendants now offer in evidence paragraph Five (5) of the Stipulation of Facts.

Mr. Blakeney: We want to object to paragraph Five (5) as irrelevant, incompetent and immaterial.

Court: Overruled. Plaintiff excepts.

(Paragraph Five)

That the contractual obligations of the chain of lessees of said land up to and inclusive of L. B. DeArman, have been performed and the defendants contend that such obligations have been performed by them.

Mr. Boys: Defendants now offer in evidence paragraph Six (6) of the Stipulation of Facts.

Mr. Blakeney: We object to paragraph Six (6); irrelevant, incompetent and immaterial and is not the best evidence.

Court: Overruled. Plaintiff excepts.

(Paragraph Six)

That the lands herein described were on January 12, 1909, duly appraised at \$3,000.00 valuation and the improvements thereon appraised at \$1,290.00 valuation. That copy of appraisements and the approvals are hereto attached, hereby referred to and marked “Exhibit B” and “Exhibit B1.”

That the lands herein described were on August 30th, 1915, duly appraised at \$2,500.00 valuation and the improvements thereon appraised at \$2,930.00 valuation. That a copy of appraisement is hereto attached, hereby referred to and marked “Exhibit C”; and was duly approved as shown by “Exhibit C-1.”

That said defendants were qualified persons under the law to hold a lease upon said lands and qualified persons under the law to purchase the said lands and to avail themselves of the preference right to the lease and purchase thereof as provided by law.

That copy of an assignment from L. B. DeArman, predecessor lessee, to the defendant William T. Price, is hereto attached, hereby referred to and made a part hereof, and marked "Exhibit D."

That a copy of the lease issued to the said defendant William T. Price is hereto attached, hereby referred to and made a part hereof, and marked "Exhibit E," but that the original lease may be exhibited at the trial.

Mr. Blakeney: We object especially to Exhibit "B," "B-1" and for objections say that the same are irrelevant, incompetent and immaterial.

Court: Overruled. Plaintiff excepts.

Mr. Blakeney: We object to that last clause just read by counsel, preceding and including Exhibit "C-1," referring to appraisement in 1915, as irrelevant, incompetent and immaterial.

Court: Overruled. Plaintiff excepts.

Mr. Boys: Defendants offer in evidence paragraph seven (7) of the stipulation of facts.

Mr. Blakeney: We object to paragraph seven (7) as irrelevant, incompetent and immaterial.

Court: Overruled. Plaintiff excepts.

(Paragraph Seven)

That at the time of the passage of the Enabling Act and approval thereof, to wit, on June 16, 1906, and at the time of the admission of the State and thereafter, as the proof may show, the said lands hereinbefore described were not known as mineral, gas or oil lands, except as set out in paragraph "12" herein.

Mr. Boys: Paragraph Twelve (12) is to follow paragraph Seven and we offer paragraph 12 in evidence.

(Paragraph 12)

That about the time of the institution of this action, a producing oil well was brought in on said section thirty-three (33) and rapid development of oil followed in the other three

quarters of said section thirty-three (33), and oil was produced therefrom and that on this date a number of producing oil wells are on said section.

Mr. Boys: Defendants now offer in evidence paragraph Eight (8) of the stipulations of fact.

(Paragraph Eight)

That the law may be considered as fully as though stipulated herein and without specific citation or reference or copying herein.

Mr. Boys: Defendants now offer in evidence paragraph Nine (9) of the stipulation of facts.

Mr. Blakeney: Plaintiff object to all the whole of section, or paragraph Nine (9) it being incompetent, irrelevant and immaterial, and objects separately to sub-division "a" and separately to sub-division "b", and separately to sub-division "c", and separately to sub-division "e", and separately to sub-division "f", and separately to sub-division "g", for the reason that each, all and every of said sub-divisions and also of said paragraph Nine (9) are incompetent, irrelevant and immaterial, referring to lands not involved in this action, but to other lands situated in the vicinity. We also especially object to the last of paragraph Nine (9) of plaintiff, which commences with the clause, "and other and similar land in the vicinity thereof, etc.," to the end of that paragraph for the reason it is incompetent, irrelevant and immaterial.

Court: Objections overruled. Plaintiff excepts.

(Paragraph Nine)

That, acting under the laws, the Commissioners of the Land Office of the State of Oklahoma, caused the other quarters in said section Thirty-three (33), and lands in the vicinity, to be appraised and advertised for sale purposes, as for example, to wit:

- (a) That on the 11th day of January, 1909, by the same authority, the Northwest Quarter ($\frac{1}{4}$) of said Section Thirty-three (33) was appraised as follows, to wit: Land \$3,000.00; improvements \$1,125.00, and sold by the State on the 19th day of January, 1911.
- (b) That on the 9th day of January, 1909, by the same authority, the Southeast Quarter ($\frac{1}{4}$) of Section Thirty-four (34) adjoining, was appraised as follows, to wit:

- Lands \$2,000.00; improvements \$697.00, and sold by the State on the 19th day of January, 1911.
- (c) That on the 9th day of January, 1909, by the same authority, the Southwest Quarter ($\frac{1}{4}$) of Section Thirty-four (34) adjoining, was appraised as follows, to wit: Lands \$2,600.00; improvements \$495.00, and sold by the State on the 19th day of January, 1911.
 - (d) That on the 9th day of January, 1909, by the same authority, the Northwest Quarter of Section Thirty-four (34) immediately adjoining said lands, was appraised as follows: Land \$2,600.00, improvements \$568.00, and sold by the State on the 19th day of January, 1911.
 - (e) That on the 11th day of January, 1909, the Northeast quarter ($\frac{1}{4}$) of Section Thirty-four (34) adjoining said land was by the same authority appraised as follows: Lands \$2,000.00, improvements \$695.00, and sold by the State on the 19th day of January, 1911.
 - (f) That on January 11, 1909, the Southeast Quarter ($\frac{1}{4}$) of Section Thirty-three (33) was, by the same authority, appraised as follows, to wit: Lands \$2,500.00, improvements \$510.00, and sold by the State on the 19th day of January, 1911.
 - (g) That on January 11, 1909, by the same authority, the Southwest Quarter ($\frac{1}{4}$) of said Section Thirty-three (33) was appraised as follows, to wit: Lands \$2,200.00, improvements \$602.00, and sold by the State of Oklahoma, on the 19th day of January, 1911.

Mr. Boys: Defendants now offer paragraph 14 of the stipulation in evidence.

Mr. Blakeney: Plaintiff objects as irrelevant, incompetent and immaterial. I want to insist that is not competent for any purpose. I want to make my objections to the first sentence, that the amount involved in this controversy is more than five thousand (\$5,000.00) dollars.

Court: Overruled. Plaintiff excepts.

(Paragraph 14)

That the amount involved in this controversy is more than Five Thousand Dollars (\$5,000.00). That there is no adequate, speedy or sufficient remedy at law for either of the parties hereto.

Mr. Boys: Defendants now offer in evidence paragraph 15, of the stipulations in evidence.

Mr. Blakeney: We object for the reason it is incompetent, irrelevant and immaterial, and because the same is a legal conclusion and not of any fact.

Court: Overruled. Plaintiff excepts.

(Paragraph 15)

That the said contract "Exhibit F" mentioned in paragraph 10 hereof, was executed without any settlement with defendants or either of them, or any disposition or alienation by defendants of their rights, if any they have, to, on or in the said lands.

Mr. Boys: Defendants now offers paragraph Sixteen (16) of the stipulation of facts, in evidence.

Mr. Blakeney: We object to that as irrelevant, incompetent and immaterial.

Court: Overruled. Plaintiff excepts.

(Paragraph 16)

That defendants claim that the purported oil and gas contract "Exhibit F" aforesaid, and the purported action of said Board set out in Paragraph 11 hereof was void and without authority of law, and in violation of defendants' constitutional rights, and protection; and plaintiff claims that the same was executed with authority of law and is valid; but it is expressly agreed that either party shall have the right to urge any other claim or right or defense within the issues.

Mr. Boys: Defendants now offer paragraph Seventeen (17) of the stipulation of facts, in evidence.

Mr. Blakeney: We object to paragraph Seventeen (17) for the reason it is irrelevant, incompetent and immaterial.

Court: Overruled. Plaintiff excepts.

(Paragraph 17)

That defendants have never at any time surrendered, alienated, sold or abandoned any right to, or interest in, said land and all of them, held by them as lessees aforesaid, under the law. Defendants claim that any act of the Board of School Land Commissioners and of the plaintiff complained of in their answer and cross petition, does, as to these defendants, violate the Fifth and Fourteenth Amendments to the Con-

stitution of the United States, and does take defendants' property without compensation and without due process of law, and in impairment of their contract.

Mr. Blakeney: We want to object specially to the first sentence of paragraph 17, and want to object specially to all paragraph 17, subsequent to the first sentence, as being irrelevant, incompetent and immaterial.

Court: Overruled. Plaintiff excepts.

Mr. Boys: Defendants now offers paragraphs Eighteen (18) of the stipulation of fact, in evidence.

Mr. Blakeney: We object to that paragraph as irrelevant, incompetent and immaterial.

Court: Overruled. Plaintiff excepts.

(Paragraph 18)

That the defendants claim the protection of the Constitution of the United States and the Amendments thereto, and particularly the Fourteenth Amendment, and claims that they have the right to invoke the vested jurisdiction of the Court, and, in due course, of the Supreme Court of Oklahoma, and if necessary, ultimately of the Supreme Court of the United States for the protection of any rights of said defendants and each of them and of their liberty and property in the Northeast Quarter ($\frac{1}{4}$) of Section Thirty-three (33), Township One (1) South, Range Eight (8) West, in Stephens County, and of their equal protection of the law, and for due process of law.

Mr. Boys: Defendants now offer paragraph Nineteen (19) of the stipulation of facts, in evidence.

Mr. Blakeney: We object to the paragraph 19, for the reason incompetent, irrelevant and immaterial.

Court: Overruled. Plaintiff excepts.

(Paragraph 19)

It is further stipulated and agreed that in 1875 these lands and surrounding lands were surveyed into sections and quarter sections and the corners thereof marked by permanent monuments by authority of the Government of the United States, and at all time herein mentioned, remained surveyed lands, were known as surveyed lands.

Mr. Boys: Section 21 of the stipulations of agreement is to be introduced by agreement, and reads as follows:

(Section 21)

It is further stipulated that any fact admitted by the pleading may be considered in addition to this stipulation, if competent, relevant and material to the issues framed. That either party reserves the right to object to the consideration of any fact stipulated herein as incompetent, irrelevant or immaterial, and either party may, in addition, introduce evidence or testimony not inconsistent with the agreements of this stipulation.

Either party may offer such parts or portions of this stipulation as such party may desire, subject to objections for incompetency, irrelevancy or immateriality.

Mr. Boys: Defendants now desire to offer a certified copy of a lease from the Territorial Board to William T. Click, to the land involved, and dated January 8th, 1902, and now ask that the same be marked Defendants' Exhibit "H".

There being no objections made to the introduction of said Exhibit "H" of defendants, same was received in evidence and is as follows, to wit:

Renewal of Lease—School Land—for 16 and 36 and 13 and 33.

This Indenture, made by and between Thomas B. Ferguson, as Governor, William Grimes, as Secretary, and L. W. Baxter as Superintendent of Public Instruction of the Territory of Oklahoma, constituting a board for leasing land reserved for school and public purposes in the Territory of Oklahoma, parties of the first part, and William T. Click, party of the second part, witnesseth: That the said parties of the first part, by virtue of the authority vested in them by Act of Congress approved May 4, 1894, and the regulations prescribed by the Secretary of the Interior, therein provided for, and in consideration of the covenants of the said party of the second part hereinafter set forth, have this day leased to the said party of the second part the following described School Land, to wit: The NE of Section 33, Township 1 S., North of Range 8 W. of the Indian Meridian, in Comanche County, Oklahoma Territory, to have and to hold the same for the term of three years from the first day of January, 1902, to the first day of January, 1905, for which said party of the second part hereby agrees to pay therefor the sum of----- dollars, cash in hand, and the receipt whereof is hereby ac-

knownedged, and twenty-five dollars on the 1st day of October, 1902, and twenty-five dollars on the 1st day of October, 1903, and twenty-five dollars on the 1st day of October, 1904.

The said deferred payments are evidenced by three certain joint, several promissory notes of even date herewith, signed by said party of the second part and two sureties for the above amount, due and payable at the time above set forth.

The said party of the second part covenants with the said parties of the first part, that he will not cut or remove, or permit to be cut or removed, any timber from said land; that he will not quarry or remove, or permit to be quarried or removed, any building or other stone from said land, except such as may be necessary for the foundations for buildings thereon; that he will not mine or remove, or permit to be mined or removed, any minerals therefrom; that he is leasing said land for agricultural and grazing purposes, and that he will cultivate the same in a husbandlike manner; that he will not assign this lease, or underlet any portion of the leased premises, and that he will not commit any acts of waste upon or to said land.

It is further agreed by and between the parties to this lease that the said party of the second part may, at the expiration of the time for which this lease is made, remove any or all of the improvements he may have placed upon said land, unless the said party of the second part shall be in default for payment of said rentals, or a part thereof, or has violated any of the conditions herein.

If default is made in the payment of said rental, or the conditions of this lease have been violated, the improvements upon said land, and the growing crops thereon, shall not be removed by the said party of the second part, or any one claiming under him, until such rental has been fully paid, together with interest, costs, damages, and attorney's fees arising from the violation of the conditions of this lease, and such unpaid rental, interests, costs, damages, and attorney's fees aforesaid, shall become a lien upon the improvements on said land, and the growing crops thereon, and such improvements or growing crops may be sold at public or private sale by the said parties of the first part, or their successors in office, without notice to the said party of the second part, and the proceeds of such sale applied to the satisfaction of the unpaid part of said rental, and in satisfaction of damages, interest, costs and attorney's fees as aforesaid.

It is expressly understood by and between the parties to this lease, that upon the non-payment of said rental or any part thereof at the time the same shall become due and payable, or upon the failure or refusal of the said party of the second part to furnish additional security for any deferred payments, when requested so to do by the said parties of the first part, or their successors in office, or if the said party of the second part shall fail in any manner to comply with the provision of this lease, or violate any of the conditions thereof, the said parties of the first part, or their successors in office, may, at their option, declare this lease forfeited, and the said parties of the first part or any other person lawfully entitled to the possession thereof on behalf of, or representing the United States, or the Territory of Oklahoma, shall have the right to take immediate and peaceable possession of said premises, together with the improvements and growing crops thereon situated. And upon the termination of this lease, either by the expiration of the time for which the lease is made, or by reason of the violation of any of the conditions hereinbefore set forth, any instrument in writing, signed by the said parties of the first part, their successors in office, showing that the person or officer named therein is entitled to the possession of the land, or that he takes possession of the improvements and growing crops thereon on behalf of the United States or the Territory of Oklahoma, shall be sufficient authority for such person or officer to take possession of the land, and to take possession of and sell the improvements and growing crops thereon, for the purpose of paying any part of said rental due and unpaid, with interest, costs, damages, and attorney's fees, as hereinbefore provided for.

If the party of the second part desires to re-lease said land at the expiration of the time for which this lease is made and files his application therefor with the said party of the first part, or their successors in office, whenever public notice is given that the bids will be received, and has complied with all the conditions herein, he will be given a preference right to re-lease said land at the appraised rental value thereof as fixed by the Board of Leasing School Lands, but the right is reserved by the said parties of the first part to reject all bids.

If, at any time the execution of this lease, it is shown to the satisfaction of the parties of the first part, or their successors in office, that there has been any fraud or collusion upon the part of the said party of the second part to obtain this

lease at a less rental than its value, it shall be null and void at the option of the parties of the first part.

Executed in duplicate.

Witness our hands and seals of the parties aforesaid this 8th day of January, 1902.

T. B. FERGUSON, [SEAL]

Governor

WILLIAM GRIMES [SEAL]

Secretary.

L. W. BAXTER, [SEAL]

Superintendent of Public

WILLIAM T. CLICK,

Lessee

Witness:

J. R. GATES, JR.

W. R. GREEN.

I, E. P. Bryan, duly elected, qualified and acting Secretary to the Commissioners of the Land Office, of the State of Oklahoma, and custodian of the records of said Commissioners hereby certify that the attached copy is a true and correct copy of the original now on file in the office of the Commissioners of the Land Office.

Witness my hand and official signature at Oklahoma City, Oklahoma, on this the 16th day of June, 1920.

E. P. BRYAN,

*Acting Secretary to the Commissioners of
the Land Office of the State of Oklahoma.*

[SEAL]

Mr. Boys: We also desire to offer in evidence a certified copy of the lease executed to W. T. Click, Jan. 21, 1905, and ask that the same be marked Exhibit "1."

There being no objections made to the introduction of Exhibit "1" the same is received in evidence and is as follows, to wit:

Mr. Boys: We desire to offer in evidence a certified copy of Extension Certificate under date of Dec. 31st, 1908, which shows that the lease had been assigned and relinquished on the 18th day of August, 1908, from William T. Click to De Arman, and ask that the same be marked Exhibit "1" and

offer the same in evidence. There being no objections said certificate is received in evidence, marked Exhibit "1" and is as follows:

Mr. Boys: We now offer in evidence a certified copy of a lease from Commissioners of the Land Office to Mr. Price, and under date of 2nd day of January, 1913.

There being no objections to the introduction of the lease under date of January 2, 1913, same is received in evidence and marked Exhibit "J" and is as follows:

Lease for Public Lands of the State of Oklahoma.

This lease made by and between the Commissioners of the Land Office of the State of Oklahoma, a commission having charge of the sale, rental, disposal and management of the school and other public lands of the State of Oklahoma, and acting for and on behalf of said State, and hereinafter designated as parties of the first part, and William T. Price, of Comanche, and hereinafter designated as party of the second part, witnesseth:

That the parties of the first part by virtue of the authority vested in them by the Constitution and Laws of the State of Oklahoma, and in consideration of the covenants of the said party of the second part hereinafter set forth, hereby lease and let unto the said party of the second part the following described public land granted to said State by the Congress of the United States, to wit:

The NE Quarter of Section 33, Township 1 South, Range 8 West of the Indian Meridian, in Stephens County, State of Oklahoma, to have and to hold the same for a period of two years from the first day of January, 1913, to and including the 31st day of December, 1914, provided, however:

This lease is made subject to the rights of the State of Oklahoma, to sell and convey the land herein described at any time, and that upon such sale, if any be provided by law prior to the expiration of this lease, the same shall thereupon expire, and the party of the second part as lessee of said land shall be entitled to purchase the same at the highest bid, subject to such conditions, limitations, restrictions, and exceptions as may be provided by law.

And as a consideration for the leasing of said land, the said party of the second part hereby agrees to pay to the said

parties of the first part, as rent therefor, the total sum of One Hundred Thirty-one and no/100 dollars, in installments as follows:

Sixty-five and 50/100 Dollars for the first day of October, 1913.

Sixty-five and 50/100 Dollars for the first day of October, 1914.

The said deferred payments are evidenced by two certain promissory notes of even date herewith and payable as above specified and signed by said party of the second part as principal and one qualified person a resident of said state, as surety.

And as a security for the payment of the above described notes at the time the same are due and payable the party of the second part hereby expressly grants and gives unto the State of Oklahoma, a first lien upon all crops and improvements now located or which may be placed or made upon said land during the term of this lease.

Said party of the second part may at the termination of this lease remove any or all of his improvements, and he shall have the right to harvest or remove any growing crop on said land, provided, however, that in case said party of the second part is in default for non-payment of any rental or assessment of any nature, he shall not be allowed to remove such improvements, or make such entry to secure crops until all arrearage is fully satisfied, said improvements that are movable, shall then be moved immediately within sixty days from termination of this lease.

I, the said party of the second part shall be in default of the usual rental due the state for a period of three months and such delinquency is not paid within thirty days from the time of service of notice, the parties of the first part shall declare this lease forfeited and the lands herein described shall revert to the State of Oklahoma the same as though this lease had never been made, provided, however, in case of forfeiture as provided by Section 6 of Chapter 118, Session Laws of the State of Oklahoma of the year 1910, the party of the second part has the right of redemption by paying all delinquencies, fees and costs of forfeiture at any time before such land is advertised to be leased. The improvements not located or which may hereafter be placed on said described land in case of forfeiture and reverting of said lands to the State as by

law provided shall be sold under the directions of the Commissioners of the Land Office at public or private sale, upon due notice to the party of the second part and the proceeds received therefrom shall inure to the said party of the second part after payment shall have been made for all delinquencies and rents and expenses incurred in making such sale.

The party of the second part hereby agrees and obligates himself that he will not cut or remove, or permit to be cut or removed any timber from said land, that he will not quarry or permit to be quarried any building or valuable stone from said lands, that he will not mine or move, or permit to be mined or moved, any minerals therefrom, and that he will not remove or take from said land any sand or gravel or other deposits of like character without first obtaining written authority so to do as the Laws of the State provide. The party of the second part hereby agrees, binds and obligates, that he is leasing said land for agricultural and grazing purposes and that he will use and occupy the same for no other purposes and that he will care for and cultivate the same in a husband-like manner and that he will protect said land from waste and that he will not permit or suffer any waste or trespass to be committed on or against said land. The said party of the second part hereby agrees, binds and obligates himself that he will not assign, transfer, or relinquish this lease and his interest therein and his interest in his improvements without the consent and approval of the said parties of the first part and that he will not sub-let or underlet the said land or any part thereof without the written permission being first obtained from the said parties of the first part.

And it is hereby agreed that the said party of the second part shall have the preference rights to re-lease said land as provided by the laws of said State. If at any time after the execution of this lease it is shown to the satisfaction of the parties of the first part that there has been any fraud or collusion upon the part of the said party of the second part to obtain the same, said lease shall be declared null and void at the option of the parties of the first part.

And it is hereby expressly agreed and understood that a violation of any of the terms and conditions of this lease, or the laws of the State of Oklahoma, concerning the public lands of said State by the said party of the second part shall subject this lease to cancellation and upon proof of the violation of

any of the terms of said lease or said laws being made to the Commissioners of the Land Office of the State of Oklahoma, such Commissioners of the Land Office shall have the right to cancel and declare the same null and void and of no effect and take possession and re-lease the same as by law provided.

This lease is executed in duplicate.

In Witness Whereof the said parties have caused their signatures to be subscribed hereto on this 2nd day of Jan., 1913.

COMMISSIONERS OF THE LAND OFFICE
OF THE STATE OF OKLAHOMA,

LEE CRUCE,

Chairman.

WILLIAM T. PRICE,

Lessee.

Attest

JOHN R. WILLIAMS,

Secretary.

STATE OF OKLAHOMA,

Stephens County, ss.:

Before me, G. W. Yeager, a Notary Public in and for said County and State on this 13th day of Jan., 1913, personally appeared William T. Price, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purpose therein set forth.

G. W. YEAGER,

Notary Public.

[SEAL]

My Commission expires Nov. 13, 1916.

Mr. Boys: We now desire to offer in evidence a certified copy of the Rules and Regulations, approved by the Secretary of the Interior for the leasing of lands during the Territorial days, same being the rules that were in force under Act of May 4th, 1891, and afterwards approved by Act of May 4th, 1894, and ask that the same be marked Defendant's "Exhibit L."

Mr. Blakeney: We object to the introduction of Exhibit "L" as irrelevant, incompetent and immaterial.

Court: Overruled. Plaintiff excepts.

Defendants' Exhibit "L" is received in evidence and by the Court Reporter marked Exhibit "L" and reads as follows:

*United States of America
Department of the Interior.*

Washington, D. C., December 1, 1920

Pursuant to Section 882 of the Revised Statutes, I hereby certify that the annex papers, being a letter from the Commissioner of the General Land Office, dated March 19, 1891, with accompanying form of lease, and a letter dated March 20, 1891, addressed to the Governor of Oklahoma, are true copies of the originals as they appear on the records and files of the Department.

In Witness Whereof, I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed, the day and year first above written.

S. G. HOPKINS,
Assistant Secretary of the Interior.

[SEAL]

*Department of the Interior
General Land Office*

Washington, March 19, 1891

Address only the
Commissioner of the
General Land Office.
The Honorable

The Secretary of the Interior.

Sir:

I have had the honor to receive two letters to your address from the Honorable George W. Steele, Governor of the Territory of Oklahoma, to one dated the 9th and the other the 10th instant, having reference to the provisions contained in section 36 (not 32) of the Indian Appropriation act of March 3, 1891, for the leasing of the school lands reserved in said Territory, on the first mentioned of which I find your endorsement dated the 13th instant, as follows, viz:

Referred to the Commissioner Gen'l Land Office who will please give this matter his immediate attention and report his views, and the proper forms to carry this act into effect. Let it have preference of other business.

The said section reads as follows, viz:

"Sec. 36.—That the School lands reserved in the Territory of Oklahoma, by this and former acts of Congress, may be leased for a period not exceeding three years for the benefit of the school fund of said Territory by the Governor thereof, under regulations to be prescribed by the Secretary of the Interior."

The duty of this office with regard to the reserved school sections is limited to observing the reservation thereof as directed in the statutes, and, as far as possible, protecting them from injury, with a view to their ultimate appropriation by grant, for the support of schools, when the title passes by operation of the law making the grant.

The records of this office consequently afford but little information on the subject of these actions. The Governor is doubtless, from his position, well advised on the subject, and he is charged by the statute with the duty of making the leases. Hence, I am of the opinion, that his representations made in the two letters above mentioned are entitled to great, if not controlling consideration.

I quote from his letter of the 9th as follows, viz:

"To the end of settling the many contentions existing which have arisen over the Territory, as to who is the rightful occupant of the said lands, and more particularly with a view to giving opportunity of preparing the ground for crops the coming season, and it is proper for me to add that the thrifty farmers are all either done breaking their ground, or are engaged in doing so now, and within a week or two weeks at farthest, planting will begin here actively. There is a difference of opinion even among those occupying the lands, as to how the leases should be made, some think the land should be appraised and give occupants the opportunity of taking them at the appraisement; while others think they should be let to the highest bidder and occupants have the preference to take said lands at the highest bid; then would come the question as to who was the occupant, and in my

opinion if the latter should be decided to be the proper course, the Governor should have the power to decide the question peremptorily, so as to avoid litigation. It will not, of course, be pleasant to the Governor; it will be a nuisance to him, unless he can have power to call to his assistance either some of the Territorial officers or some of the agents of your Department to assist him; however, it was not my intention to make any suggestions in regard to the making of the 'regulations' to be prescribed, but to remind you how important it is to provide for the leasing of these lands at a very early date, so that our crops may be out of the way before the hot season arrives, and the Territory receive a correspondingly higher price for the use of lands obtained in time for the spring crops. I hope also that some arrangements may be made whereby I may have proper clerical assistance; records will have to be made of these leases, and it seems to me the Territorial Auditor should make the record."

I quote also from the Governor's letter of the 10th as follows, viz:

"I feel that it will expedite matters for me to say to you with reference to the regulations you are to make for leasing the school lands in this Territory, that there is much difference in the value of the sections, for instance, here lying up against the town in one section of very good land, and because it is near the city ought to bring more money than a stony knob (and there are few of those) eight or ten miles out, with no water on it; then there are different classes of settlers on these lands, those having my greatest sympathy went onto the school land sections believing that they were lands subject to entry, not knowing they were school sections until they came to make their filings in the land office, and in the meantime all the desirable land in the Territory had been taken up and these settlers having no place to go, or perhaps being unable to go, have remained there and have improved the school sections where they resided; then there is another class of settlers who have come into this country owing to the good advertising it had, thinking there were lands open for settlement, but finding none unoccupied excepting the school sections, and being un-

able to go farther on or to return, were forced to settle upon the school lands, as on account of the numerous contests the first settlers were unwilling to allow these men to even camp upon their lands, hence they have remained and have improved the school sections and have my sympathy.

In some cases and in fact in a great many cases, more than one of these families have come in and settled upon the same quarter section.

Now, aside from these settlements there are a great many people who have lived next to the school sections; many people who have cultivated their own land to some extent and in many cases have cultivated their own land well and have also put improvements upon the school sections with a view of holding it for some friend or relative, and they have even gone onto sections where the first and second class mentioned have made improvements and have tried to drive them off, failing in this have plowed land along side of that already plowed; then, non-residents have come in and built fences around these sections where there is water, and have either put their own stock on the lands for grazing or have rented them to others.

The 'Bulldozers' are those from whom we may expect the most trouble, that is men who have gone onto these lands since they were occupied by others, and at any opportunity given them, harass the men who wants to make a home you may rely upon their doing so, hence my suggestion yesterday that a clause in the regulations should recite in express terms that a decision will be final, I mean that whoever the Governor decides is entitled to the land, will get it, excepting an appeal may go to the Secretary.

Where an investigation is had and it is ascertained that a man has gone first upon the land in good faith and in good faith has taken steps to maintain his family thereon, and it is decided such a man shall have any preferences no 'Bulldozer' should be able to come in and by false affidavits or litigation prevent him from going on and raising his crop.

Unless an appraisalment is made of all the land in the Territory I don't see how it can be decided better than by either receiving open or sealed bids for the use of these lands, giving the man who has occupied the land in good

faith and has shown his faith by his work, a preference of taking it at the highest bid; and authority should also be conferred to reject any or all bids, if it should be found there is a collusion among settlers to prevent the lands leasing at a fair value; then will come the question of payment, and there are few who can pay in advance, and for agricultural purposes. It is not expected much profit will result from the first year's labor, nor for that matter the first two years. If they could pay at the end of the first year (giving the best security we can obtain to do so) with a forfeiture clause at the end of the first year or the second year if payment is not made, and requiring pre-payment for the third year, I believe it would be as fair for both the settlers and the Territory as could be asked.

It seems to me there ought also to be a clause giving the lessee preference where a new lease is to be made, at the end of the third year, if one is made, provided he has cultivated the land in a business like manner.

After again impressing upon you the importance of early action in prescribing the regulations necessary with a view to the farmers getting to work, I am, &c &c."

In reference to the subject, I have to report my views as agreeing substantially with those above quoted from the Governor's letters, and would suggest that the Honorable Secretary communicate with the Governor and prescribe regulations to the effect following, viz:

1st. The Governor shall execute the leases according in general with forms ordinarily in use, but containing a reference to the authority under which he acts, and describing the lands according to the legal subdivisions of sections, township and ranges, for such periods as he may deem best, in the several cases, not exceeding three years in any. I enclose draft of a form deemed suitable.

2nd. The quantity of land to be leased to any one person shall not exceed one quarter section.

3d. Sealed bids shall be received after proper public notice to be given in the manner deemed by the Governor the best practicable under the circumstances, and the lease to be awarded to the actual bidder at the highest amount of rent bid—in each case.

4th. In the event of controversy as to priority of settle-

ment, a hearing shall be allowed by the Governor, testimony taken and decision rendered by him, without unnecessary loss of time, and subject to appeal to the Secretary of the Interior within fifteen days from notice.

5th. The periods of payments of rents shall be fixed in the leases by the Governor at his discretion according to the circumstances of each case, with security satisfactory to him to be required for the payment thereof when due, should he deem it necessary, and forfeiture to be provided for in case of failure.

6th. The leases shall be forwarded to the Secretary for his approval before being executed by the Governor, to be accompanied with a report from him setting forth the material facts of the case for the Secretary's consideration.

7th. The lease shall be recorded by the Secretary of the Territory according to the provisions of the 3rd section of the Act of May 2, 1890, pamphlet statutes, page 82-85.

8th. In case a new lease is to be made at the end of the third year, the preference shall be given the former lessee, if the Governor finds that he cultivated the land in a business like manner, and fulfilled the term of the lease in good faith.

9th. Any moneys received by the Governor on account of rents of such lands shall be accounted for and deposited as public money according to law. Title XL, Revised Statutes.

10th. The precise forms and methods of proceedings shall be left to the judgment of the Governor, subject to the general rules above given.

It would appear that the Governor will require some clerical assistance, and that some expense will have to be incurred in connection with the business. I am not able to find any statute providing thereof, unless the money appropriated for contingent expenses of the Territory, viz, \$1,500 for the current fiscal year by Act of July 11, 1890, pamphlet statutes, page 249, and \$1,500 for the next fiscal year, by act of March 3, 1891, can be made to answer.

The Governor's said letters are herewith returned.

Very respectfully,

(Signed) W. M. STONE,

Acting Commissioner.

11-1MD COPY

Form of Lease.

This lease, made this-----day of----- between-----

-----, Governor of the Territory of Oklahoma, representing the United States, by virtue of the 36th section of the Act of Congress of March 3, 1891, and the regulations prescribed by the Secretary of the Interior therein provided for, of the first part, and----- of the second part, witnesseth:

That the said party of the first part doth hereby lease and convey unto the said party of the second part, the following described tract of land, viz: the----- of Section----- in Township----- of range----- of the Indian Meridian, in Oklahoma Territory:

To hold for the term of-----years from the date hereof;

Yielding and paying therefor yearly the sum or rent of -----payable (here set forth the time and terms of payment).

Any failure to pay the rent hereinbefore reserved when due to produce an absolute forfeiture of this lease.

The lease of said tract of land, or any part of it is not assignable, nor is the said tract, or any part of it to be underlet, under penalty of forfeiture.

And the said party of the second part covenants: That he will pay the said rent in manner aforesaid;

That he will not do or suffer any waste in the demised premises;

That he will deliver up the premises to the said party of the first part, or his successor in office, or other party lawfully entitled to possession thereof and on behalf of or as representing the United States, peaceably and quietly at the end of the said term.

In witness whereof, the said parties hereunto set their hands and seals.

(Signature) -----[SEAL]

(Signature) -----[SEAL]

F. A. W.

Department of the Interior,
Washington

March 20, 1891.

The Governor of Oklahoma,
Guthrie, Oklahoma.

Sir:

I have the honor to acknowledge the receipt of your letters

of the 9th and 10th instants offering suggestions and asking instructions relating to the leasing of school lands in the Territory of Oklahoma.

In reply thereto I enclose herewith a copy of the report to me by the Acting Commissioner of the General Land Office dated yesterday, embodying his views and proposing certain regulations in the premises. I have approved the recommendations of the Acting Commissioner.

Any amendments you may suggest, which may be found best in practice, may be submitted for my future consideration.

Very respectfully,

GEO. CHANDLER,

Secretary.

2704-91

11-2 aw.

EMD.

Mr. Boys: We now offer in evidence the depositions of Scott Stine, admitting the formal part of it.

Direct examination by Mr. Boys:

SCOTT STINE being first duly sworn to testify to the truth, the whole truth and nothing but the truth, in answer to interrogatories propounded, testified as follows, to wit:

Q. State your name?

A. Scott Stine.

Q. What is your official position?

Mr. Merritt: We object to the introduction of any evidence on behalf of the State as incompetent, irrelevant and immaterial.

Court: Overruled. State excepts.

Mr. Ambrister: We object to the introduction of any evidence on behalf of the Magnolia Petroleum Company as incompetent, irrelevant and immaterial.

Court: Overruled. Plaintiff excepts.

A. Chief Clerk of Lease and Land Division.

Q. As such Chief Officer, or Clerk of the Land and Lease Division, do you have the care and custody of the records of the office of School Land Commissioners, of the State of Oklahoma, covering the leasing of the public lands and the sale of the public lands?

A. Yes.

Q. I will ask you if you have the records showing the payment of rentals on the Northeast $\frac{1}{4}$ of Section 33, Township 1 South, Range 8 West?

A. I do.

It is agreed between the parties that the rentals on the above described land and tract of land were paid from the time of the first leasing, 1902, down to, and not including 1920. And that the defendant Price has paid his rentals promptly from the year 1909, to the year 1919, inclusive. That the rentals for the year 1920 were not due until October 1, 1920, as shown by the records of the Commissioners of the Land Office, and that at no time has there been any effort on the part of the Commissioners of the Land Office to forfeit on the Commissioners of the Land Office, any lease on said premises or to foreclose thereon.

Q. Does your records show whether or not at any time the Commissioners of the Land Office of the State of Oklahoma have forfeited or foreclosed or otherwise acquired the interest of the lessee to this land?

By Mr. Merritt: Objected to as incompetent, irrelevant and immaterial.

Court: Overruled. State excepts.

A. The records do not show any such action taken by the Commissioners of the Land Office.

Q. Mr. Stine, do you have in the files of the Commissioners of the Land Office, the published advertisement for the sale of lands in Section 33 and Indemnity Land in Stephens County, Oklahoma?

A. No such copy of the advertisement on file in this office that I know of.

Q. Now, Mr. Stine, do you have in your files of the Commissioners of the Land Office, one of the pamphlets that you sent out for the sales held during 1910-1911 that included the sale of Section 33 and Indemnity Lands in Stephens County?

A. I think so.

Q. Could you make a search, and if so attach one of those to your deposition and mark it "Exhibit A," if we desire it?

A. I think I can. (Witness reports cannot find pamphlet.)

By Judge Sharp:

Q. Mr. Stine, referring to the pamphlet issued by the Commissioners of the Land Office for the sale of the lands in Jefferson, Stephens, Grady, Caddo, Comanche, Kiowa and

Custer Counties, comprising the Fifteenth Sales District of the State of Oklahoma, I notice that none of Sections thirty-three in Jefferson County, and but two quarters sections in Stephens County, including the Price Quarter Section, and but three quarters sections in Grady County; three in Caddo County and but approximately six quarter sections in Comanche County—that is, by “quarter sections” I mean the sub-division of section 33—were advertised for the sales commencing February 21, 1916, and ending March 14, 1916, in the Fifteenth Sales District of the State. I will ask you if it is not true that prior to the date of the sales advertised for February and March, 1916, all others of sections 33 in the five counties last named have not been sold, and if the records of your office do not so show?

By Mr. Ambrister: Objected to as incompetent, irrelevant and immaterial, not pertaining to any issue in the trial of this case and not within the personal knowledge of witness.

Court: Overruled. Plaintiff excepts.

A. I do not know.

Q. Will you examine the records, Mr. Stine and be able to give us an answer to the question at the time of our reconvening tomorrow morning?

A. Yes.

Q. I notice in the advertisement, or in the pamphlet sent out by the Commissioners of the Land Office of the sale that was held in 1911, to wit, on January 18, 1911, that the northwest quarter section, the southwest quarter section and the southeast quarter section of Section 33, Township 1 South, Range 8 West were all advertised for sale. Do you know whether or not those lands were sold on that date, and if so whether or not they were sold to the lessees thereon at the appraised value?

A.

Q. Also whether or not the four quarter sections in section 34, Township 1 South, Range 8 West were not advertised on the same day and sold to the respective lessees at the appraised value, and also in this connection to ascertain whether or not Section 34 last referred to was indemnity or lieu land?

A.

Q. Mr. Stine, I will ask you to state if in the matter of making sales, the practice had not been for the sales force in

the office to make up generally a list of unsold lands and to advertise all such lands for sale?

By Mr. Merritt: The State objects as incompetent, irrelevant and immaterial, and for the further reason that the office force had no practice or custom, and they only acted by direction of the Commissioners of the Land Office who only acted after action by the Legislature, and that the Statute authorizing the sale shows what lands should be sold.

Court: Overruled. Exceptions.

By Mr. Ambrister: The Magnolia Petroleum Company objects as incompetent, irrelevant and immaterial, and for the further reason that the office force had no practice or custom and that they only acted by direction of the Commissioners of the Land Office who only acted after action by the Legislature, and that the Statute authorizing the sale shows what lands should be sold.

Court: Overruled. Plaintiff excepts.

Q. (By Judge Sharp) I will supplement the last question, as the practice referred to, was not that followed under the direction of the Chief Officer in charge of the advertisement and sale of unsold public lands, and that if the instructions to sell such unsold lands were not given in the first place by the Commissioners of the Land Office?

Mr. Ambrister: The Magnolia Petroleum Company further objects because not within the knowledge of the witness; not shown he was connected with the Commissioners of the Land Office at the time referred to in the question.

Court: Overruled. Plaintiff excepts.

Whereupon time for adjournment having arrived, it was agreed by and between the parties that further taking of testimony may be resumed at nine o'clock on March 2, 1921. Adjourned.

Now, on this second day of March, 1921, all parties appearing as heretofore, the following testimony was produced:

Mr. Stine called:

By Judge Sharp:

Q. Mr. Stine, are you prepared now to answer the interrogatory referred to on page 4 of the deposition in which on yesterday you informed the notary that you would examine the records and undertake to answer on the reconvening of the hearing today?

By Mr. Bakeney and Mr. Merritt: Objected to as incom-

petent, irrelevant and immaterial; and we object to any evidence as to any tract of land excepting the tract of land in controversy.

Court: Overruled. Exceptions.

A. I am. Will state that I examined the records closely and so far as I was able to ascertain all tracts in those five counties not advertised in the 1916 sale had been sold prior to that date in Section 33.

Q. And at that time did your examination of the records disclose at what time such lands had been sold prior to the advertisement referred to?

A. In the years 1910 and 1911.

Q. I will ask you a further question, Mr. Stine. If the few unsold sections 33 in the counties referred to being Jefferson, Stephens, Grady, Caddo and Comanche Counties, were advertised for sale in 1916?

By Mr. Blakeney and Mr. Merritt: Objected to as incompetent, irrelevant and immaterial, and especially object to any inquiry referring to any other land in controversy.

Court: Overruled. Plaintiff excepts.

A. Would state that the lands advertised for 1916 are shown in the pamphlet published in connection with that sale, being pamphlet for the Fifteenth Sales District.

Q. I will ask you to examine the 1916 pamphlet for the Fifteenth Sales District and state whether or not the Price land being the Northeast $\frac{1}{4}$ of Section 33, Township 1 South, Range 8 West was advertised for sale?

Mr. Blakeney: Of course, the pamphlet is the best evidence and I am not objecting to the question, but if the pamphlet is introduced I insist on it being withdrawn.

A. To the best of my knowledge, it was not advertised.

Q. The pamphlet you have before you shows that all the land that was advertised for the 1915 sale in the Fifteenth Sales District and it includes Stephens County?

A. Yes.

Q. And that pamphlet does not show this land was advertised for sale at that time?

A. The answer in reference to question regarding whether all lands not advertised in the pamphlet containing the lands advertised in 1916, with regard to Section 33, as not having been advertised in this pamphlet, and as to whether or not they had been sold prior to this time—prior to 1916; I

answered that question by stating that all lands not advertised in the 1916 sale had been sold prior to that time. I wish to state, however, that they were either sold or could not be sold because of the fact that the lessee would not agree to the appraisement as made by the Commissioners of the Land Office.

Q. Do you know whether in any of the unsold land, Mr. Stine, the lessee had taken an appeal from the appraisements on any particular tract of land—I mean appealed to the District Court?

A. I do not.

Q. Do your records show that any appeals from the appraisement to the District Court were taken by any of the lessees on the unsold lands above referred to?

A. Not that I know of.

Q. Now, for the purpose of identification—

By Mr. Blakeney: We hereby agree that the pamphlet had by Judge Sharp is a printed copy of the official advertisement of the sales of State and School Lands of Oklahoma of District No. 15 for the 1916 sale, and that he may himself keep the pamphlet and offer any part he wants to at the trial, subject, however, to the objections as to competency, relevancy and materiality.

Q. Mr. Stine, have you examined the records of your office with respect to the sales of the three quarter sections in Section 33, Township 1 South, Range 8 West, being the northwest quarter and the southeast quarter of such section; and you are now able to state to whom such lands were sold and at what price, giving the name of the purchaser.

Mr. Blakeney: Objected to as incompetent, irrelevant and immaterial and especially to any of the lands excepting the lands in controversy.

Court: Overruled. Plaintiff excepts.

A. Yes, sir.

Q. Who purchased the Northwest $\frac{1}{4}$ of Section 33, Township 1, Range 8?

By Mr. Blakeney:

By Mr. Blakeney: Objected to as incompetent, irrelevant and immaterial.

Court: Overruled. Plaintiff excepts.

Q. Do you know if the lessee purchased at that sale?

By Mr. Blakeney: Objected to as incompetent, irrelevant

and immaterial, and especially as to any land excepting the land in controversy.

Court: Overruled. Exceptions.

Q. Was the northwest quarter sold to the lessee?

A. It was.

Q. Was it sold at the appraised value?

M. Blakeney: Objected to as incompetent, irrelevant and immaterial.

Court: Overruled. Plaintiff excepts.

A. It was.

Q. I will ask you if the southwest quarter of 33 was sold to the lessee?

By Mr. Blakeney: Objected to as incompetent, irrelevant and immaterial.

Court: Objections overruled. Exceptions.

A. It was.

Q. I will ask you if the southeast quarter of 33 was sold to the lessee at the appraised value?

By Mr. Blakeney: Objected to as incompetent, irrelevant and immaterial.

Court: Overruled. Exceptions.

A. It was.

Q. I will ask you if you have examined as to whether or not all of the four quarters sections in 34 immediately adjoining 33 on the east were sold at that 1911 sale?

A. I have.

Q. Were each of those quarter sections sold to the lessee?

By Mr. Blakeney: Objected to as incompetent, irrelevant and immaterial.

Court: Overruled. Exceptions.

A. They were.

Q. At the appraised value?

A. They were.

Q. I will ask you whether or not in your examination of last evening and this morning you ascertained whether or not the sections 34 last referred to was indemnity land?

Mr. Blakeney: It is agreed that Section 34 is indemnity land; subject to the objection of competency, materiality and relevancy.

Cross examination by Mr. Blakeney:

Q. Mr. Stine, how long have you been with the School Land Department?

A. Little over two years.

Q. You have no personal knowledge of the conditions existing in 1915 and 1916?

A. No.

Q. Your testimony as to what lands were sold prior to that time or advertised for sale at that time is merely a statement of what you find from the records of the office?

A. Yes, sir.

Q. Have you a copy of the rules of the office in concrete form, pamphlet form—rules I mean adopted by the Commissioners as authorized by the Statutes?

A. Have a pamphlet containing most of the rules, at least.

Q. Have you more than one copy of it?

A. Yes, sir.

Q. Copy you can furnish us and let us examine it and see what portions of it we would want to introduce in evidence?

A. Yes, sir.

Q. I will ask you to state what was the practice of the Commissioners with reference to the sale of land or the withdrawing of land from sale where the lessee had refused to agree to the appraisement, during the time you have been Chief Clerk as explained in your direct examination?

Mr. Sharp: Objected to because the same is not within the issues of this case, and incompetent, irrelevant and immaterial.

Court: Overruled. Defendants except.

A. I will state that during that time no land has been advertised for sale unless the lessee would agree to the appraisement as made by the Commissioners of the Land Office as to the value of the land and the improvements.

Q. What appraisement do you refer to there as being the one that was adopted for the sale of the land—I mean, what year?

A. During the year of 1919-20. I am trying to tell you now during my term here in the office that no sale has been ordered unless the lessee agreed to the appraisement of the land and improvements.

Q. Has there been any general appraisement during the time you have been in the office.

A. No.

Q. You have then adopted all the appraisements made,

or you made a new appraisalment on the particular piece of land you intended to sell since you have been in the office?

A. Made no new appraisalment.

Q. There has been no general appraisalment for sale purposes?

A. No, there has been some appraisalment for the purpose of fixing the rentals on lands not sold.

Q. Now during the period you have been in the office, lands have only been offered for sale upon the application of the lessee.

Mr. Boys and Mr. Sharp: Objected to as incompetent, irrelevant and immaterial.

Court: Overruled. Defendants except.

A. Yes.

Q. When a lessee filed an application for the sale, you had an appraisalment made and if it was agreed to by the lessee, then the land was offered for sale?

A. Yes, sir.

Q. Now, you know the defendant, Mr. Price?

A. I have met him.

Q. Have you ever discussed with him the matter of selling this land?

A. Yes, sir.

Q. When, and why did you have the discussion?

A. It was in the spring of 1920. He came to the Land Office to discuss the general subject of his land and I was unable to determine exactly what he wanted to talk about except just state what he said.

Cross examination by Mr. Merritt:

Q. Mr. Stine, have you examined the records to ascertain whether Mr. Price, the defendant, ever filed a petition asking to have the Northeast $\frac{1}{4}$ of Section 33, Township 1 South, Range 8 West, sold?

A. Yes, sir.

Q. What do the records show?

Mr. Boys: We object to the question as immaterial, for the reason the rights of the parties are fixed by the statutes as to the sale of the land and the protest to be filed.

Court: Overruled. Defendants except.

A. Never been able to find any such requisition or application.

Q. If a petition or application had been filed, would the records show it?

A. They would.

Mr. Boys: It is agreed that such parts of this witness' cross examination as is not strictly cross examination is submitted for and on behalf of the plaintiff and intervenor, and as their witness.

Re-direct examination by Mr. Boys:

Q. The records in the Price file are not very complete, are they, Mr. Stine?

A. I can't say they are.

Q. As a matter of fact, such correspondence as has been had between Mr. Price and the Board, if any, and all circular letters that were sent out to Mr. Price, none of these appear in the file?

A. Yes, sir, they do.

Q. How many?

A. I can't say how many.

Q. Will you produce those that appear in the file?

A. Mr. Merritt has them.

Q. About how many are there in there?

A. I do not know.

Q. Has Mr. Merritt all the letters that appear in the file that in any way affect the matter in controversy?

A. He has what I have been able to find.

Q. If Mr. Merritt produces those at the trial of the case, that is all that is in the office that you can find?

A. Yes, sir.

Q. As a matter of fact, the records do show there was such an appraisalment for sale purposes, and Mr. Price did accept that appraisalment, did he not?

A. I don't remember without looking it up.

Q. When you testify that no sale has been made since you were in the office excepting where the lessee filed an application for sale, that only applies to the two years you have been in office.

A. Yes, sir.

Q. Is it a fact that there have been no public lands in the State of Oklahoma sold during the two years you have been in office excepting upon petition of the lessee?

A. That applies to everything excepting town lots?

Q. You have not even sold any in 13, 16, or 36 during the

time you have been in office except upon petition of the lessee?

A. No, sir.

Q. You do not mean to say that was the practice before that time because you have no knowledge prior to that time?

Mr. Merrill: Objected to as incompetent, irrelevant and immaterial, and for the further reason that sales were only made in accordance with the provisions of the Statute, and not by any custom or practice of the Department.

Court: Overruled. Exceptions.

A. No, I have no personal knowledge prior to that time.

Q. Now, do you find in the files and records of your office petitions of the lessee for the sale of all the lands that were sold at the sales held in 1910-1911?

Mr. Blakeney: It is admitted by us that they did not require an application on part of lessee for any sale at the general sales, but as he stated there has been no general sale since he has been in office.

Mr. Merritt: We will admit that at the general sales held, no petition of the lessee for sale was required.

Q. Now, the sales held for 1910-1911 were general sales, were they not?

A. Yes, sir.

Q. And the sales held in 1915 and 1916 were general sales, were they not?

A. They were.

Q. Now, Mr. Stine, during the year 1920, the Commissioners did have the land in controversy appraised, did they not?

A. Yes, sir.

Q. That appraisement is on file in this office, is it not?

A. Yes, sir.

Q. That appraisement shows the improvements on the Price Quarter, does it not, at \$6,000?

A. It runs in my mind that is what it is.

Q. What does that appraisement show the land to be appraised at?

Mr. Merritt and Mr. Blakeney: Objected to as incompetent, irrelevant and immaterial, and for the further reason that under the law the appraisers making the appraisement for rental purposes were not required to appraise the improvements, and that the values placed upon the improvements were simply for information in the land office.

Court: Overruled. Exceptions.

A. \$3,200.00.

Mr. Boys: It is agreed that the appraisalment referred to in these depositions refer to the 1915 appraisalment.

Mr. Blakeney: Plaintiff rests.

Mr. Boys: Call Mrs. Ora Price.

MRS. ORA PRICE, being called as a witness for the defendants, and after being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination by Mr. Boys:

Q. You may state your name?

A. Ora Price.

Q. You are the wife of W. T. Price?

A. Yes, sir.

Q. When did you move on the land involved in this controversy?

A. December 2, 1908.

Q. Where have you lived then since that time?

A. Lived there continuously.

Q. Do you claim that as your home, Mrs. Price?

Mr. Blakeney: We object to that as incompetent, irrelevant and immaterial.

Court: Overruled. Plaintiff excepts.

A. Yes, sir.

Q. Have you ever, at any time, signed any instrument in any manner to any person, company, corporation or association in the State of Oklahoma, waiving your claim to that land, whatever that may be?

Mr. Blakeney: We object for the reasons it is incompetent, irrelevant and immaterial; records do not show that she has any claim and in fact she has none.

Q. You do claim that as your homestead, do you not?

Mr. Blakeney: Objected to as irrelevant, incompetent and immaterial.

Court: Overruled. Exceptions.

A. Yes, sir.

Q. And have during all this time?

Mr. Blakeney: Objected to as irrelevant, incompetent and immaterial.

Court: Overruled. Exceptions.

A. Yes, sir.

Q. And have during all this time?

Mr. Blakeney: Objected to as irrelevant, incompetent and immaterial.

Court: Overruled. Exceptions.

A. Yes, sir.

Q. Mr. Price, does not write does he, Mrs. Price?

A. No, sir; he has bad eyesight.

Q. You, or some of the other members of the family do what writing and reading is necessary?

A. Yes, sir.

Q. Mrs. Price, do you know of a letter that was written to the Board of Commissioners of the Land Office of the State of Oklahoma, in February, 1910, or thereabouts, which was written to Mr. Cassidy, Secretary of the Commissioners of the Land Office?

A. I know we written him along there.

Q. I now hand you a letter dated February 19th, 1910, which purports to be signed by W. T. Price and will ask you whether or not that was a letter that was sent by your husband at that time to Mr. Cassidy?

A. Yes, sir; I am not positive I wrote that letter, but I know very well that it went from our home and with our knowledge.

Q. Perhaps one of the boys wrote it?

A. Yes, sir.

Mr. Blakeney:

Q. If you wrote it you wrote it for Mr. Price, or whoever wrote it did?

A. Yes, sir; and by his authority and with his knowledge.

Mr. Boys: It is stipulated and agreed that the date of this letter, Ed O. Cassidy, was secretary of the Commissioners of the Land Office of the State of Oklahoma.

Mr. Boys: We now offer the letter in evidence and asks that the same be marked Defendants' Exhibit "O."

Mr. Blakeney: Plaintiff object as irrelevant, incompetent and immaterial.

Court: Overruled. Plaintiff excepts.

Said Exhibit "O" is received in evidence and is as follows, to wit:

Comanche, Okla., Feb. 19, 1910.

Mr. Ed Cassidy.

Dear Sir:

I wrote you before Christmas about the re-adjustment of NE of Sec. 33 of Stephens County and you said you would notify me the first of the year when the adjusters come to Comanche Co. But they have already been there and have heard nothing. I want to get this place re-appraised and would like for it to be straightened out before the rest of the land sells, as I want it to go with the rest. Was not pleased with the first appraisement and if something is not done before time for it to sell there will be a balk in the sale. What must I do about this re-adjustment I wanted it done and you did not notify me when they met in Comanche County. Let me hear from you at once.

Respectfully,

W. T. PRICE.

P. S. If this is not going to sell this year I want to make a trade with you to cut some wood off the pasture land, but if it does sell I will not do it.

Endorsed on back of letter

NE 33 1 S 8 Stephens Co. Adj. 68

Received

Feb. 21, 1910

Secretary.

And the same is included in the offer of the letter showing the above stamped on the back of the letter.

Q. Have you written other letters up there besides this one to get this matter adjusted so there could be a sale of this land?

Mr. Blakeney: Objected to as incompetent, irrelevant and immaterial.

Court: Overruled. Plaintiff excepts.

A. Yes, sir; every time we thought it needed it, we did.

Q. Did you receive a letter from Mr. Cassidy in reply to that letter?

A. I think we did; I think they always answered our letters.

Q. Have you any of those letters?

A. No, sir.

Q. I hand you now what purports to be a carbon copy of

a letter, handed to me by Mr. Merritt, and ask you to state if, according to your best knowledge and best memory, and recollection if that is a copy of the letter you received?

Mr. Blakeney: We will admit that is a copy of the letter and object to it as incompetent, irrelevant and immaterial.

Court: Overruled. Plaintiff excepts.

Feb. 21, 1910.

Re Re-adjustment.

Mr. W. T. Price.

Comanche, Okla. No. 4

Dear Sir:

Replying to yours of the 19th inst., our record show you have on file an application for re-adjustment and correction of the 1908 appraisalment on the NE $\frac{1}{4}$ of Section 33 1 S 8. This application will be heard at the next meeting of the adjusters Board in Stephens County; it is not possible to have the hearing in time for the land to be placed on sale in the first sale of lands in that county; it will probably be next winter before this land will be sold.

Yours very truly,

ED. O. CASSIDY,

Secretary.

Mr. Blakeney: No cross examination.

MR. W. T. PRICE, being recalled as a witness for the defendants, testified as follows:

Direct examination by Mr. Boys:

Q. Mr. Price, you are the same Mr. Price that was on the stand yesterday?

A. Yes, sir.

Q. You remember the sale of the public lands of the State of Oklahoma, that was held in Stephens County, January 18, 19, 1911?

A. Yes, sir.

Q. Did you attend that sale?

A. Yes, sir.

Q. Did they offer your land for sale that day?

A. No, sir.

Q. Did they offer other lands in Section Thirty-three (33) and indemnity land for sale on that day?

Mr. Blakeney: We object; incompetent, irrelevant and

immaterial.

Court: Overruled. Plaintiff excepts.

A. Yes, sir.

Q. Did you make any demand upon the officers in charge of the sale that day with relative to your land?

Mr. Blakeney: Objected to as incompetent, irrelevant and immaterial.

Court: Overruled. Plaintiff excepts.

A. Yes, sir; I did.

Q. State what you did and what they said?

Mr. Blakeney: Objected to for the reason it is incompetent.

Court: Overruled. Plaintiff excepts.

A. I told them, when they got through that section, I said put my land up and let it go with the rest of the land, and they no, can't do that, it hasn't been advertised; said it would be right away soon; that there would be another sale right soon, but couldn't sell it then.

Mr. Blakeney: We now move to strike out the last part of the answer, same being hearsay and not made by any officer authorized by the State to make such a statement.

Court: Overruled. Plaintiff excepts.

Q. That conversation was had and made by the officers there in charge of the sale?

A. Yes, sir.

Cross examination by Mr. Blakeney:

Q. You are in possession of this land and holding it under a lease of the State?

A. Why, I am on it; I don't know whether I am going to hold it or not, but I am trying to hold it as hard as anybody.

Q. You are in possession under a lease from the State?

Yes, sir.

Q. Paying rentals to the State?

A. Have been.

Q. As a matter of fact you have only failed to pay the rentals that have matured during the pendency of this law suit?

A. I never did fall down on a just debt; if it is just I will pay.

Q. You have paid it year after year to the State and have paid it on the land you have been occupying?

A. Yes, sir.

Q. You never bought the land?

A. No, sir.

Q. Been no sale of it to you or anybody else?

A. No, sir.

Defendants rest.

Plaintiff rests.

That thereafter, to wit, on the 18th day of April, 1921, said cause coming on for further hearing and the parties appearing as shown at the trial, and the Court being fully advised in the premises, enters judgment for the defendants, to which action the Court the Plaintiff and the Intervenor each at the time excepted and still except, and said Journal Entry was ordered filed and recorded and is in words and figures as following to wit:

In the District Court in and for said County and State.

STATE OF OKLAHOMA,

Stephens County.

MAGNOLIA PETROLEUM COMPANY, a joint stock association,
John Sealy, E. R. Brown, R. Waverly Smith, E. E.
Plumly and W. C. Proctor, Trustees, Plaintiffs,

VS.

WILLIAM T. PRICE and ORA PRICE, his wife, Defendants,
STATE OF OKLAHOMA, *ex rel.* Commissioners of the Land Office
of the State of Oklahoma and *ex rel.* S. P. Freeing, At-
torney General of the State of Oklahoma, Interveners.

No-----

Decree.

This cause coming on to be heard on this the 3rd day of March, 1921, plaintiff appearing by its attorneys, Blakeney & Maxey, and the defendants, William T. Price and Ora Price, appearing in person and by their attorneys, Stevens & Richardson; Stuart, Sharp & Cruce, and Blake & Boys; thereupon, it appearing that the State of Oklahoma, *ex rel.* Commissioners of the Land Office and the Attorney General of the State of Oklahoma, heretofore and on the 3rd day of December, 1920, filed in this cause their petition of intervention, and that notice of the filing of such petition has heretofore, on December 13, 1920, been served upon attorneys for defendants.

And the matter of permitting such petition of intervention to be filed coming on for hearing, and there being no objection, either on the part of the plaintiff or of defendants, to the filing of such petition of intervention and of the State of Oklahoma thereby becoming a party to this action, it is by the Court ordered that the State of Oklahoma be, and the same is hereby, permitted to intervene in this cause as of December 3, 1920. Thereupon, the plaintiff is granted permission to reply instantter to the defendants' answer and cross-petition and the defendants are granted permission to file their answer to the petition of intervention of the State and the State granted permission to file its reply to the answer and cross-petition of the defendants. Whereupon, all parties announced ready for trial and waived a jury in said action, and agreed that the cause should be tried before the Court. The cause was then heard upon the amended petition, answer and cross-petition, petition of intervention, reply and answer to petition of intervention, and replies of the plaintiff and intervenor, exhibits, stipulations of parties, admissions, and upon the evidence and argument of counsel, and the time for adjournment having arrived, the further hearing of said cause was continued until March 4, 1921, on which date, all parties appearing as on the previous day, the trial was proceeded with and the taking of the evidence and the argument of counsel concluded. Thereupon, by agreement of the parties, the Court continued said cause until a later day, namely, April 18, 1921, for final decision and a decree. Thereafter, and on the 18th day of April, 1921, all parties appearing as on the previous days, and the Court being fully advised in the premises, and upon due consideration thereof, finds and decrees as follows:

(1) That the temporary injunction heretofore issued and continued in said cause was wrongfully issued and continued, and that the same should be dissolved and held for naught. To which plaintiff and intervenor each except.

(2) That the oil and gas lease held by plaintiff, Magnolia Petroleum Company, executed by the Commissioners of the Land Office on the 4th day of January, 1919, and which is referred to and marked "Exhibit A" to plaintiff's amended Petition, is null and void, and of no force and effect as against the defendants herein, William T. Price and Ora Price. To which plaintiff and intervenor each except.

(3) That the lands in controversy have been leased by

the proper authorities of the Territory of Oklahoma since the 8th day of January, 1902, with the preference right to re-lease, all being done under and by virtue of the Acts of Congress and the Rules and Regulations then, and until statehood, in force, and have at all times since statehood been leased by the proper state authorities to the present time, with the preference right to re-lease and preference right to purchase as provided by the Enabling Act and the valid laws of the State of Oklahoma authorizing the sale of public lands. To which plaintiff and intervener each except.

(4) That the defendant, William T. Price, purchased the lease and improvements on the lands involved, and the preference right to re-lease and the preference right to purchase the lands involved, during the fall of 1908, and has continuously occupied and held said lands under such preference right lease as provided by the Enabling Act and laws of the State since said date, and that the Commissioners of the Land Office and the State of Oklahoma, have recognized his preference right to re-lease and his preference right to purchase, as provided by law at all times since the time of the filing and acceptance of the relinquishment from his predecessor in title, L. B. DeArman, on or about the 15th day of October, 1909, to and including the present time. To which plaintiff and intervener each except.

(5) That since the said purchase by said Price, he has continuously occupied said land with his family as his homestead and has at all times asserted his claim of title in and to said land. To which plaintiff and intervener each except.

(6) That on or about the 12th day of January, 1909 the said lands were appraised under directions of the Commissioners of the Land Office for sale purposes at Three Thousand Dollars (\$3,000.00), and that no appeal was taken from said appraisal by the said William T. Price, and the said appraisal became thereby finally fixed and adjudicated as the true appraised value of said land for sale purposes, and that the said sum of Three Thousand Dollars (\$3,000.00) was the fair and reasonable value of the land, exclusive of improvements, at the time that said lands should have been sold by the Commissioners as provided by the laws of the State of Oklahoma. To which plaintiff and intervener each except.

(7) That the Commissioners of the Land Office have wrongfully failed and neglected to sell said land as required

of them by the laws of the State of Oklahoma. To which the plaintiff and intervener each except.

(8) That the said defendant, William T. Price, has at all times been ready, willing and able to comply with any and all provisions of law relative to the purchase of said lands and did demand of the Commissioners of the Land Office and of their agents and representatives entrusted with the sale of said lands, that the same be sold, which was refused.

(9) That the defendant, Price, was a qualified person under the law to hold a lease to said lands and to exercise his preference right to re-lease said lands and his preference right to purchase the same, and had acquired and now has a vested right in and to said land. To which the plaintiff and intervener each except.

(10) That the defendant, William T. Price, is the equitable owner of the title to said premises and is entitled to have his record title to the said lands made perfect upon the payment of the purchase price of Three Thousand (\$3,000.00) Dollars as provided by law. To which the plaintiff and intervener each except.

(11) That the land in controversy was not valuable for minerals, oil or gas, or known to contain oil or gas, prior to discovery thereof in the year 1920, and after the commencement of this action. To which the plaintiff and intervener each except.

(12) That the defendants, William T. Price and Ora Price, are entitled to an injunction against the plaintiff, the Magnolia Petroleum Company, and against the State of Oklahoma, and the Commissioners of the Land Office of the State of Oklahoma, enjoining them and their successors, and their agents, servants and employes, and their successors in office, from in any way interfering with the possession of the defendants in and to said lands, or interfering in any way with the rights and title of the said defendants. To which the plaintiffs and intervener each except.

(13) And the Court finds not only the foregoing facts and issues of fact in favor of the defendants herein, but finds all other facts in this cause and issues of law and fact in favor of defendants. To which the plaintiff and intervener each except.

It is therefore ordered, adjudged and decreed as follows:

(1) That the plaintiff, Magnolia Petroleum Company; John Sealey, E. R. Brown, R. Waverly Smith, E. E. Plumley, and W. C. Proctor, as trustees, take nothing by their suit and that the temporary injunction heretofore granted, and afterwards continued against defendants, William T. Price and Ora Price, be dissolved, vacated, set aside and held for naught. That the plaintiff having gone upon the lands hereinafter described in paragraph 2 of this decree, under the authority of the temporary injunction heretofore wrongfully obtained and improvidently granted and continued, the said plaintiff is hereby ordered and directed to quit and vacate and abandon that part and parts of the premises occupied by it, and if said plaintiff does not quit and vacate said premises, or any part thereof, within thirty (30) days from the date of this decree, the Court Clerk is hereby directed upon the expiration of said thirty (30) days and upon the filing of an affidavit by the defendant showing that said plaintiff has not quit and vacated said premises, as required herein, to issue a writ directed to the sheriff of Stephens County, Oklahoma, directing the said Sheriff to remove said plaintiff and all its trustees, officers, agents and employees from any and all parts of said land. To which the plaintiffs and intervener each except.

(2) That the plaintiff, Magnolia Petroleum Company; John Sealey, E. R. Brown, R. Waverly Smith, E. E. Plumley and W. C. Proctor, as trustees, its or their successor or successors, agents, servants and employees, be, and they are hereby enjoined from trespassing or going upon, or exercising any claim of possession, right or authority over, or in any way interfering with or obstructing defendants in the exercise of their respective rights, title and possession in and to the Northeast Quarter (NE $\frac{1}{4}$) of Section Thirty-three (33), Township One (1) South, Range Eight (8) West of the Indian Meridian, in Stephens County, Oklahoma. To which the plaintiff and intervener each except.

(3) That the Commissioners of the Land Office of the State of Oklahoma, and their successors in office, and their agents, servants and employees, together with such other officers of the State having, or claiming to have, authority in the premises, and each of them, be, and they are hereby, enjoined from exercising any alleged right or authority over, or in any way interfering with or obstructing defendants in the exercise of

their rights, title and possession in and to the tract of land named and described in the foregoing paragraph. To which plaintiffs and intervener each except.

(4) That the oil and gas lease executed by the Commissioners of the Land Office of the State of Oklahoma to the plaintiff, the Magnolia Petroleum Company, on the 4th day of January, 1919, a copy of which is attached to plaintiff's amended petition and marked "Exhibit A", is hereby declared to be void as to the defendants, William T. Price and Ora Price, and the same is hereby adjudged to be set aside and held for naught, and the plaintiff, and its trustees, officers and agents, be, and they are hereby ordered and directed to execute a proper release of said oil and gas lease within thirty days from the date of this decree that will effectually release such oil and gas lease from being a cloud on the title to said lands. And if the said plaintiff shall fail to execute such release within said thirty days, it is further ordered, adjudged and decreed that this decree shall be a full and complete release of said oil and gas lease so held by the plaintiff herein, and that a certified copy of this decree may be filed with the County Clerk of Stephens County, Oklahoma, and with the Secretary of the Commissioners of the Land Office of the State of Oklahoma by the defendants herein. To which the plaintiff and intervener each except.

(5) That the defendants, William T. Price and his wife, Ora Price, have, and have had at all times since their purchase, a vested right in and to said lands and have done all things required of them under the law, and are the owners and holders of the equitable title to said lands. That the sum of three thousand dollars (\$3,000.00) is, and was, the fair and reasonable value of said lands, exclusive of the improvements owned by the said defendants, at the time said lands should have been sold by the Commissioners of the Land Office, and the State of Oklahoma by and through the Commissioners of the Land Office, is hereby ordered and directed to make and execute to the defendant, William T. Price, a patent in fee in the usual form, upon the payment by the said William T. Price of the sum of three thousand dollars (\$3,000.00), together with interest thereon at the rate of five per cent (5%) from January 19, 1911, less the amounts paid as rentals since January 19, 1911, together with interest on said amounts paid as rental at the rate of five per cent (5%) from the date of

each respective payment. To which the plaintiff and intervenor each except.

(6) That the plaintiff, the Magnolia Petroleum Company, be and it is hereby directed to account for all oils, gas and other minerals taken from said lands, and for all items of loss and damage that it may have occasioned to said lands by reason of going upon the same under and by virtue of its oil and gas lease and the temporary injunction heretofore issued in this cause; and the Court reserves jurisdiction of this cause for the further taking of testimony and hearing on the matters and things set out in this paragraph, on both questions of law and fact, and sets the hearing of the same for the 6th day of May, 1921. To which the plaintiff and intervenor except.

(7) That the action of the Commissioners of the Land Office in leasing said lands to plaintiff for oil and gas purposes, violated the rights guaranteed to the defendants by the Constitution of the State, the Constitution of the United States and the laws of the United States. To which the plaintiff and intervenor except.

(8) That a Receiver be appointed to take charge of the mineral development in and of said lands and the Honorable Ed. J. Kelly is hereby appointed such receiver until the further order of this Court, upon the giving of a bond in the sum of Fifty Thousand Dollars (\$50,000) to be approved by this Court or the Judge thereof, and the taking and filing of the usual oath of office; and upon the execution and approval of said bond and taking of said oath of office, he shall proceed to take charge of said lands, and of all and any of the oil and gas wells, pipes, tanks, pumps, buildings, machinery and appliances of all and every kind used, or connected with the oil and gas and mineral development of said lands. Also to take charge of all oil, gas and mineral production thereon, the storage, handling, sale and disposition thereof, and keep an accurate account of all oil and gas produced thereon, and the expense occasioned in the production thereof, and collect the proceeds from all oil and gas produced and pay the necessary and proper expenses thereon, and to employ and discharge or retain such help and employees as may be necessary to properly operate such mineral development. That upon taking possession of said property, said receiver shall

make and cause to be made a full and complete survey and inventory of the said property and make a full and complete report thereof to the Court, and shall mail a true copy of said report to the counsel for the respective parties in this cause. The said receiver is further directed not to take charge of the agricultural operations of the defendant William T. Price. That the duties herein required of the receiver may be changed at any time by the Court upon proper notice to the parties in the action, and such further and other duties as may be required and necessary may be from time to time given him by the Court; but that said Receiver shall have full authority to do and perform the things required of him pending the further orders of this Court. To which the plaintiff and intervener except.

(9) That the defendants, William T. Price and Ora Price, have and recover of the plaintiff and of the intervener, the costs of this action; to which judgment and findings of the Court and each and every paragraph thereof, the plaintiff and the intervener, each for itself, excepts and exceptions are allowed.

Thereupon, the plaintiffs and the intervener in open court gave notice of their desire and intention to appeal the said cause to the Supreme Court of said State, and the Court caused said notice to be entered in the trial docket and in the minutes and journals of the said Court.

Thereupon, the plaintiffs and intervener each filed their motions for a new trial, and the same coming on for hearing, and the Court being fully advised in the premises, overruled each of the said motions for a new trial, and the plaintiffs excepted to the action of the Court in overruling their motion for a new trial, and the intervener excepted to the action of the Court in overruling its motion for a new trial.

Thereupon, the said plaintiffs and the said intervener each gave notice in open court of their intention and desire to appeal said cause to the Supreme Court, and the Court caused such notice to be entered in the trial docket and in the minutes and journals of the said Court.

That thereafter, to wit, on the 18th day of April, 1921, the plaintiff, the Magnolia Petroleum Company, filed in said cause its motion for a new trial; which motion for a new trial is in words and figures as follows, to wit:

In the District Court in and for said County and State.
STATE OF OKLAHOMA,
Stephens County, ss:

No. 2885.

MAGNOLIA PETROLEUM COMPANY, a joint Stock Association,
John Sealy, E. R. Brown, R. Waverly Smith, E. F.
Plumly and W. C. Proctor, Trustees, Plaintiffs,

vs.

WILLIAM T. PRICE, and ORA PRICE, his wife, Defendants.

and

STATE OF OKLAHOMA, *ex rel* Commissioners of the Land Office,
Intervener.

Motion for New Trial.

Comes now the plaintiff in the above entitled cause and moves the court to set aside the findings and judgment rendered in the said action on the 18th day of April, 1921, upon the grounds and for the following reasons, to wit:

First, That the decision and judgment of the Court is contrary to the law.

Second, That the decision and judgment of the Court is unsupported by the evidence.

Third, That the Court erred in refusing to issue a temporary injunction in the said action, and in not making the same permanent on the final hearing thereof.

Fourth, The Court erred in vacating the temporary restraining order issued herein.

Fifth, For errors of law occurring at the trial and excepted to by both the plaintiff and the intervener at the time of the decision or decisions.

Sixth, That the Court erred in not sustaining the motion to strike certain matters from the answer of the defendants.

Seventh, That the Court erred in overruling the demurrer interposed by the plaintiff to the defendant's answer.

Eighth, That the Court erred in not entering judgment in favor of the plaintiffs and against the defendants perpetually and permanently enjoining the defendants and each of them from in any way interfering with the plaintiff in the exploring

for and developing the oil and gas in and under the premises in controversy.

BLAKENEY & MAXEY,
HUBERT AMBRISTER,
WOMACK & BROWN,

Attys. for Plaintiff.

That thereafter, to wit, on the 18th day of April, 1921, the State of Oklahoma, Intervener herein, filed in said cause its Motion for a New Trial; which Motion for a New Trial so filed, being in words and figures as follows, to wit:

In the District Court in and for said County and State.

STATE OF OKLAHOMA,
Stephens County.

No. 2885.

MAGNOLIA PETROLEUM COMPANY, a joint Stock Association,
John Sealy, E. R. Brown, R. Waverly Smith, E. E.
Plumly and W. C. Proctor, Trustees, Plaintiffs,

vs.

WILLIAM T. PRICE, and ORA PRICE, his wife, Defendants.

and

STATE OF OKLAHOMA, *ex rel* Commissioners of the Land Office,
Intervener.

Motion for New Trial.

Comes now the State of Oklahoma, Intervener in the above entitled action, and moves the Court to set aside the findings and judgment rendered in said action on the 18th day of April, 1921, upon the grounds and for the reasons following, to wit:

First, That the decision and judgment of the Court is contrary to the law.

Second, That the decision and judgment of the Court is unsupported by the evidence.

Third, That the Court erred in refusing to issue a temporary injunction in the said action, and in not making the same permanent on the final hearing hereof.

Fourth, The Court erred in vacating the temporary restraining order issued herein.

Fifth, For errors of law occurring at the trial and excepted to by both plaintiff and the intervener at the time of the decision or decisions.

Sixth, That the Court erred in not sustaining the motion to strike certain matters from the answer of the defendants.

Seventh, The Court erred in overruling the demurrer interposed by the plaintiff to the defendants' answer.

Eighth, That the Court erred in not entering judgment in favor of the plaintiff and against the defendant perpetually and permanently enjoining the defendants and each of them from in any way interfering with the plaintiff in the exploring for and developing the oil and gas in and under the premises in controversy.

GEO. E. MERRITT,
Attorney for Intervener.

Endorsed: No. 2885. Filed in District Court Apr. 18, 1921.
G. A. Witt, Court Clerk.

And thereafter, to wit, on this 18th day of April, 1921, said cause coming on further for hearing on motions for new trial filed by the plaintiff and intervener, and the Court being duly advised

It is ordered that the motion for new trial filed by the plaintiff, be, and the same is hereby overruled, and the plaintiff excepts and gives notice in open court on said date of their intentions to appeal to the Supreme Court, and the Clerk of the Court entered such notice on the Trial Docket.

and it is further ordered that the motion for a new trial of the intervener, the State of Oklahoma, *ex rel.* Commissioners of the Land Office, be, and the same is hereby overruled, and the Intervener excepts and gives notice on said date of its intention to appeal to the Supreme Court, and the Clerk of said Court entered such notice on the Trial Docket.

The above and foregoing case-made sets out fully and correctly all the pleadings filed in said cause; all motions filed or made, and all rulings thereon; all exceptions taken by the defendants and plaintiff and intervener to such rulings and orders; all the evidence offered, introduced or received upon the trial; all admissions and agreements; the judgment of the Court thereon and the exceptions of the plaintiff and the intervener thereto; that the same is a full, true, complete and correct case-made and transcript of all the pleadings, motions

and all the evidence, findings, orders, judgments and proceedings had in said cause.

In the District Court of Stephens County, Oklahoma.

No. -----.

MAGNOLIA PETROLEUM COMPANY, a joint Stock Association,
John Sealy, E. R. Brown, R. Waverly Smith, E. E.
Plumly and W. C. Proctor, Trustees, Plaintiffs,

vs.

WILLIAM T. PRICE, and ORA PRICE, his wife, Defendants.

and

STATE OF OKLAHOMA, Intervener.

To Blake & Boys, Stevens & Richardson, Stuart, Sharp &
Cruce, Attorneys of Record for the Defendants.

You, and each of you will take notice that the above and foregoing record in the above entitled and foregoing cause is tendered to you as a full, true, complete and correct case-made in said cause this the 20th day of April, 1921.

BLAKENEY & MAXEY,
Attorneys for Plaintiff.

GEO. E. MERRITT,
Attorney for Intervener, The State of Oklahoma.

We hereby acknowledge due, legal and timely service of the above and foregoing case-made on us on this the 20th day of April, 1921.

STUART, SHARP & CRUCE,
BLAKE & BOYS,
STEVENS & RICHARDSON,
Attorneys of Record for Defendants.

In the District Court of Stephens County, State of Oklahoma.

No. -----.

MAGNOLIA PETROLEUM COMPANY, a joint Stock Association,
John Sealy, E. R. Brown, R. Waverly Smith, E. E.
Plumly and W. C. Proctor, Trustees, Plaintiffs,

vs.

WILLIAM T. PRICE and his wife, ORA PRICE, Defendants.

and

STATE OF OKLAHOMA, Intervener.

I, Edward Henderson, the duly qualified and acting Court Reporter for the above entitled court, hereby certify that the foregoing record contains a full, true, complete and correct record, transcript and copy of all the evidence, both written and oral, offered in the trial of said cause; all the statements of the Court and of counsel; all the motions, demurrers, objections and exceptions and all rulings of the Court and the exceptions thereto, and all other proceedings had in the said trial of said case and the same are true and correct and I do so certify.

Given under my hand as such official Court Reporter on this the 18th day of April, 1921.

EDWARD HENDERSON,

District Court Reporter.

In the District Court of Stephens County, State of Oklahoma.

No. 2885.

MAGNOLIA PETROLEUM COMPANY, a joint Stock Association,
John Sealy, E. R. Brown, R. Waverly Smith, E. E.
Plumly and W. C. Proctor, Trustees, Plaintiffs,

vs.

WILLIAM T. PRICE, and ORA PRICE, his wife, Defendants.

and

STATE OF OKLAHOMA, Intervener.

I, the undersigned, Judge of the above entitled court at the time of the trial of the above entitled cause, as said Judge who tried said cause, hereby certify that the above and foregoing case-made in said cause was presented to me as a full,

true, complete and correct case-made in said cause and the suggestion of amendments to said case-made in said cause being waived by counsel for plaintiff, intervener and defendants and notice of the time and place of presentation of same me for signing and settling having also been waived by all interested parties.

Now, therefore, I, as said Judge of said above entitled Court, who tried said cause, hereby settle and sign the above and foregoing case-made as a full, true, complete and correct case-made in said cause and direct that it be attested as such by the clerk of the above court and filed by him therein to be thereafter withdrawn and delivered to plaintiff for filing in the Supreme Court of the State of Oklahoma.

Witness my hand this the 28th day of April, 1921.

CHAM JONES,
District Judge.

Attest:

G. A. WITT,
Court Clerk of Stephens County, Oklahoma.

By Jessie F. Barnes, Deputy Court Clerk of Stephens County.

In the District Court of Stephens County, State of Oklahoma.

No. 2885.

MAGNOLIA PETROLEUM COMPANY, a joint Stock Association,
John Sealy, E. R. Brown, R. Waverly Smith, E. E.
Plumly and W. C. Proctor, Trustees, Plaintiffs,

vs.

WILLIAM T. PRICE, and ORA PRICE, his wife, Defendants.
and

STATE OF OKLAHOMA, Intervener.

To Blake & Boys, Stevens & Richardson, Stuart, Sharp &
Cruce, Attorneys of Record for the Defendants:

You, and each of you, will take notice that the plaintiff and the intervenor in said action will, on the 28th day of April, 1921, at the hour of 11 o'clock A. M., present the above and foregoing case-made to the Honorable Cham Jones, the Judge presiding at the trial of said cause, in the District Court room in the Court House in the Town of Duncan, Stephens County,

Oklahoma, and ask that the same be settled, signed, certified and ordered filed, as by law provided.

Dated this 20th day of April, 1921.

B. B. BLAKENEY,
HUBERT AMBRISTER,
WOMACK & BROWN,
Attorneys for Plaintiff.
GEO. E. MERRITT,
Attorney for Intervener.

We hereby acknowledge service of the above and foregoing notice on us on this the 20th day of April, 1921.

STUART, SHARP & CRUCE,
Attorneys of Record for Defendants.

STATE OF OKLAHOMA,
County of Stephens, ss:

I, G. A. Witt, Court Clerk within and for the County of Stephens and State of Oklahoma, do hereby certify the above and foregoing to be a full, true and complete transcript of record as fully as the same remain on file and of record in my office in case of Magnolia Petroleum Company vs. W. T. Price *et al.*

In testimony whereof, I hereto set my hand and affix the seal of said court, at my office in the City of Duncan, in the County of Stephens and State of Oklahoma, this 28th day of April, A. D. 1921.

G. A. WITT,
Court Clerk.

JESSIE T. BARNES,
Deputy.

[SEAL]

Thereafter, at the April, 1921, term of said Supreme Court, on the third day of May, 1921, the following proceeding was had in said cause, to wit:

No. 12,243.

MAGNOLIA PETROLEUM Co.

VS.

WM. T. PRICE ET AL.

And now on this day it is ordered by the court that the

above cause be advanced and set for oral argument on June 20, 1921.

Thereafter at the April, 1921, term of said Supreme Court, on the third day of May, 1921, the following proceedings was had in said cause, to wit:

No. 12,243.

MAGNOLIA PETROLEUM CO.

VS.

WM. T. PRICE ET AL.

The above cause coming on for hearing in open court upon the application of the plaintiffs for supersedeas of the judgment entered on April 18, 1921, by the District Court of Stephens County, and the court being fully advised in the premises, orders:

That the judgment be, and hereby is, superseded upon the execution by the plaintiff, the Magnolia Petroleum Company, of bond in the sum of Fifty Thousand Dollars (\$50,000.00) with sureties, to be approved by the clerk of said court and conditioned as may be agreed by the parties hereto, or ordered by the Chief Justice of said court, to be filed within 10 days from the date hereof.

It is further ordered that so much of the said judgment of the District Court of Stephens County appointing Ed. J. Kelly receiver and fixing his powers in said matter, is hereby modified as follows: That Ed J. Kelly be, and hereby is, continued receiver, and be required to make a bond in the sum of Ten Thousand Dollars (\$10,000.00), to be filed with and approved by the clerk of the District Court of Stephens County, and upon the giving of such bond and filing of his oath of office, shall be, and is hereby given authority to inspect and check all of the operations of the plaintiffs on said premises, and the running of all oil and gas produced on said premises; and that the said Magnolia Petroleum Company shall continue the operation of the three wells now completed on said premises, and continue the drilling to completion of the three wells now being drilled on said premises, and when the said wells are also completed, to operate the same; this order to be subject to the further order of the court. It is further ordered that whenever the Magnolia Petroleum Company desires to run any oil from the said lease, that they

shall give notice to the said Kelly, or his agent in charge of the matter, of their intention to run such oil, at least forty-eight (48) hours before the same is run, and that thereupon the said receiver shall measure the said tank so run and the amount of oils that may be run therefrom, or cause the same to be so measured; and shall keep an accurate account of the amount of oil so run from said premises, together with the market price thereof including bonus, if any.

It is further ordered that in case gas shall be discovered or produced in paying quantities from said premises, the court reserves that question for further orders.

It is further ordered that the receiver may at any time, or either party of the said cause, upon notice to the other parties, present an application for a change or modification of the duties of the said receiver.

O.K. B. B. Blakeney for plf.

J. F. Sharp and A. T. Boys, Attys. for dfts.

Thereafter, at the June, 1921, term of said Supreme Court, on the twentieth day of June, 1921, the following proceeding was had in said cause, to wit:

No. 12,243.

MAGNOLIA PETROLEUM CO.

VS.

WM. T. PRICE ET AL.

And now on this day the cause is argued orally and submitted and it is ordered by the court that leave be granted to file supplemental brief in said cause.

Thereafter, at the June, 1921, term of said Supreme Court, on the nineteenth day of June, 1921, the following proceeding was had in said cause, to wit:

No. 12,243.

MAGNOLIA PETROLEUM CO.

VS.

WM. T. PRICE ET AL.

And now on this day it is ordered by the court that leave be granted to drill off-set well as per application filed in the above cause.

Thereafter, on August thirtieth, 1921, the following proceeding was had in said cause, in said Supreme Court, to wit:

No. 12,243.

MAGNOLIA PETROLEUM Co.

VS.

WM. T. PRICE ET AL.

And now on this Aug. 30, 1921, it is ordered by the court that leave be and is hereby granted to drill off-set well as per application filed in the above cause.

Thereafter, at the June, 1921, term of said Supreme Court, on the twenty-seventh day of September, 1921, the following proceeding was had in said cause, to wit:

No. 12,243.

MAGNOLIA PETROLEUM Co.

VS.

WM. T. PRICE ET AL.

And now on this day it is ordered by the Court that plaintiff in error be permitted to drill off-set well No. 10 on the premises and at the point indicated on plat attached to and made a part of motion for leave to drill.

Thereafter, at the February, 1922, term of said Sureme Court, on the twenty-first day of March, 1922, the following proceeding was had in said cause, to wit:

No. 12,243.

MAGNOLIA PETROLEUM Co.

VS.

WM. T. PRICE ET AL.

And now this cause comes on for final decision and determination by the court upon the record and briefs filed therein.

And the court having considered the same finds that the judgment of the trial court in the above cause should be reversed.

It is therefore ordered and adjudged by the court that the judgment of the trial court in the above cause be, and the same is hereby reversed and the temporary injunction against W. T. Price and Ora Price, his wife, defendants in error, be, and the same is hereby made perpetual and the said defend-

ants in error are hereby perpetually enjoined from interfering with the operations of said oil and gas lease, and the State of Oklahoma is hereby decreed to be entitled to all royalties of oil and gas produced under said lease, and said defendants in error are hereby decreed to be entitled to such damages as they may have sustained to their agricultural lease by reason of the operation of said oil and gas lease. Opinion by Harrison, C. J. All the Justices concur.

Filed in Supreme Court of Oklahoma, March 21, 1922,

Wm. M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 12,243.

MAGNOLIA PETROLEUM COMPANY, a joint stock association, John Sealy, E. R. Brown, R. Waverly Smith, E. E. Piumly and W. C. Proctor, trustees; State of Oklahoma ex rel. Commissioners of the Land Office, S. P. Freeling, Attorney General of the State of Oklahoma, Plaintiffs in Error,

VS.

WILLIAM T. PRICE and ORA PRICE, Defendants in Error.

Syllabus.

1. The Act of Congress, March 3rd, 1891, 26 Stat. L. 1026, does not provide for a preference right to re-lease the public lands of the Territory, nor do any subsequent acts, pertaining to the subject prior to the passage of the Enabling Act, provide for the re-leasing of such lands, nor for a preference right to the original lessee.

2. The moving and expressly designated purpose set forth in the various acts of Congress, pertaining to the public lands which were reserved for the future State, was that sections 16 and 36 of each township should constitute a permanent school fund for the common schools; that section 13 in each township, in the portions of the state where sections 13 and 33 were reserved from settlement, was reserved for University and other school purposes; and section 33 reserved for public building purposes, and no other purpose is given by Congress for reserving said lands from settlement, except the designated purposes mentioned.

3. After the approval of the Act of March 3rd, 1891, *supra*, the Secretary of the Interior made a rule, of which the follow-

ing is the pertinent part: "In case a new lease is made at the end of the third year, the preference right shall be given the former lessee." Held, this did not grant to the lessee the right to lease in perpetuity, but merely granted a preference right to re-lease under conditions prescribed in case the Territory chose to re-lease such lands.

4. The grant of lands, to wit, Sections 16 and 36, for common school purposes; section 13 for the support of higher institutions of learning; and section 33 for the purpose of public building, and the acceptance of such lands by the State by express provision of the Constitution, constituted a complete contract and compact between the government of the United States and the State of Oklahoma, and supersedes all previous acts, rules and regulations in conflict therewith.

5. Said Act of Congress, known as the Enabling Act, did not impose upon the State the obligation to sell said lands, or any of them, but merely provided that if sold they should be sold in the manner provided for in the grant and acceptance by the Constitution.

6. The State could have, had it so elected, retained said lands, and all of them, as a permanent fund for the respective purposes for which they were granted, and never sold any of them at any time, and yet not violated any condition of the grant.

7. Neither was the State obliged to lease any of said lands beyond the conditions expressed in the Enabling Act and accepted under the Constitution.

8. Lessees, holding under leases granted prior to Statehood, have no rights under the lease, except those expressly provided for in the Enabling Act, the Constitution and the statutes of Oklahoma, and the terms of their lease contract.

9. Neither under the conditions of the Enabling Act, the provisions of the Constitution nor the terms of the lease contract involved here, is the agricultural lessee, defendant in error, W. T. Price, entitled to the oil and gas and other minerals in said land until same is conveyed to him by the State, nor has he power to force the State to convey same to him until the State elects to do so.

10. The oil and gas lease herein granted to the Magnolia Petroleum Company by the Commissioners of the Land Office, is not in conflict with the conditions of the grant, nor the acceptance thereof, nor with the statutes of Oklahoma, and is a valid lease.

11. The Defendant in Error, W. T. Price, is not authorized to interfere with the operation of said oil and gas lease, but is entitled to whatever damages he may sustain to the operation of his agricultural lease by reason of the operation of such oil and gas lease.

Error from the District Court of Stephens County. Hon. Cham Jones, Judge.

Reversed.

S. P. Freeling, Attorney General; C. W. King, Asst. Attorney General; Geo. E. Merritt, Attorney for Commissioners; W. H. Francis, B. B. Blakeney and Hubert Anabrister, Attorneys for Magnolia Petroleum Company.

Stevens & Richardson, Stuart, Sharp & Cruce, and Blake & Boys, Attorneys for Defendant in Error, W. T. Price.

OPINION BY HARRISON, C. J.:

This suit grew out of a controversy between the Magnolia Petroleum Company, which owns an oil and gas lease on the NE $\frac{1}{4}$ of Sec. 33, Twp. 1 S. of R. 8 W. 1. M., and W. T. Price, who owns an agricultural lease on the same land.

Under its lease the Magnolia Petroleum Company sought to go upon the land and drill for oil and gas. Price sought to prevent the Magnolia Company from drilling and refused to allow its employees to enter upon the land for drilling purposes, he, Price, being in possession under his agricultural lease and claiming the right to all the oil and gas by virtue of such lease.

On May 25th, 1920, the Judge of the District Court being absent from the county, the Magnolia Company applied to and was granted a temporary order by the County Judge, restraining Price from interfering with the Magnolia Company's drilling operations, and thereafter, on June 4th, the Judge of the District Court, having returned to the county, continued said order in force until June 22nd, and it seems that such order remained in force until March, 1921, and that the Magnolia Company, operating under such order, had drilled some five or six producing wells from which it had taken vast quantities of oil.

On November 18th, Price filed his answer to the Magnolia Company's amended petition, claiming the oil and gas by virtue of his agricultural lease and preference right under the law to purchase, and prayed for an accounting for oil and gas the Magnolia Company had taken from the land.

Before the case was finally disposed of the State intervened

through the Commissioners of the Land Office and the Attorney General, claiming that the title to said lands and the mineral rights were still in the State and that it had executed a valid oil and gas lease to the Magnolia Company and was entitled to its royalties therefrom for the benefit of the State, Section 33 having been reserved by Acts of Congress, by the Enabling Act and the Constitution for public building purposes.

The case was not disposed of by the District Court until March, 1921, at which time the temporary restraining order which had been in force since May, 1920, was dissolved and judgment rendered in favor of Price. Price being adjudged to be the owner of all oil and gas and other mineral rights by virtue of his preference right to purchase when the land should be sold, and the State and Magnolia Company being perpetually enjoined from interfering with said land or with Price's right to the oil and gas and other minerals therein, and an accounting ordered. Both the Magnolia Company and the State had appealed from said judgment.

It being conceded, or at least it being true, that under the law the Commissioners of the Land Office have jurisdiction over public lands of the State with power to lease and sell such lands, the real decisive questions are, whether said Commissioners have done any act which the law did not authorize them to do; or have failed to do some act which the law required them to do. The rights of all parties are to be determined by these questions, and these questions must be determined by the law relating to this subject and the terms of the lease contracts which the State has made with these parties.

The first laws bearing directly upon the question herein involved was the Act of Congress, approved May 2nd, 1890, 26 Stat. L. 81, a portion of which act constitutes the Organic Act of the Territory of Oklahoma. Section 18 of which provides:

"That sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby reserved for the purpose of being applied to public schools in the State or states hereafter to be erected out of the same. In all cases where sections sixteen or thirty-six, or either of them, are occupied by actual settlers prior to survey thereof, the County Commissioners of the counties in which such sections are so occupied are author-

ized to locate other lands, to an equal amount, in sections or fractional sections, as the case may be, within their respective counties, in lieu of the sections so occupied.

* * * .”

Said section further provides:

“All tracts of land in Oklahoma Territory which have been set apart for school purposes, to educational societies or missionary boards at work among the Indians, shall not be opened for settlement, but are hereby granted to the respective educational societies or missionary boards for whose use the same has been set apart. * * * .”

These are all the provisions in the Organic Act which directly pertain to the subject under consideration, and it will be observed that the controlling purpose of the Act was to reserve sections numbered sixteen and thirty-six in each township for school purposes when the Territory became a State. That is, said sections were reserved from homestead settlement in order that when such Territory should become a State said sections might be granted to the State for school purposes and no others. So specific and clear is this idea carried out that it provided in cases where said sections numbered sixteen and thirty-six, or either of them, were occupied by actual settlers prior to the survey thereof, by the government, that the county commissioners of the counties of the Territory should have power to select other lands in lieu of the lands so occupied by actual settlers at the time of the passage of the act, in order that when the Territory became a State it would have sections numbered sixteen and thirty-six in each township, or lands selected in lieu thereof, free and clear of all claims of actual settlers prior to the passage of the act, for common school purposes exclusively, and to reserve same from homestead settlement after the passage of the act. No provision in the entire act is clearer than that the sole purpose of Congress was to reserve said sections from homestead settlement in order that when the Territory became a State it would have such lands as a permanent fund for common school purposes exclusively. No settlers' rights or preference rights of any character are recognized or contemplated except as to those actual settlers in good faith before the passage of the act, and before the survey of the lands by the government, and in such case it authorized the county commissioners to select other lands in lieu of the lands so settled.

To the same effect are all subsequent acts bearing upon the

subject. The Act of March 3rd, 1893, opening the Cherokee Outlet to settlement, made the same reservation as to sections sixteen and thirty-six, and for the same specific purpose. The Executive Proclamation of August 19th, 1893, opening the Cherokee Outlet for settlement, made the same reservation and made a reservation as to section thirteen in each township for University, Agricultural and Normal School purpose, subject to the action of Congress; and section thirty-three of each township for public building purposes. By the Act of March 4th, 1894, Congress ratified the additional reservation made by the President and expressly reserved sections thirteen and thirty-three in each township for the specific purposes mentioned in the President's Proclamation.

The Act of January 18th, 1897, made similar reservations as to Greer County, and for the same purpose. Likewise the Act ratifying the agreement with the Wichita Indians, and the Act of June 6th, 1900, ratifying the agreement with the Kiowa and Comanche Indians, made the same reservations and for the same specific purpose.

This precludes the idea that Congress originally intended to give any person a preference right of any character to said lands. No provision was made in the Organic Act even for the leasing of said lands by the Territory.

Let it be observed also that the title to these lands was not granted to the Territory. They were merely reserved from homestead settlement, the title remaining in the United States until such time as such Territory became a State. The lands themselves were not yet granted, but as the act reads, "*Are hereby reserved for the purpose of being applied to public schools in the state or states hereafter to be erected out of the same,*" and the Territory was not authorized to make any disposition of said lands by lease or otherwise until the Act approved March 3rd, 1891, 26 Stat. L. 1026, section 18 of which provides:

"That the school lands reserved in the Territory of Oklahoma by this and former acts of Congress may be leased for a period not exceeding three years for the benefit of the school fund of said Territory thereof, under regulations to be prescribed by the Secretary of the Interior."

Thus it may be observed that Congress, considering that the Territory had no right theretofore to lease or dispose of

these lands; passed the Act authorizing such lands to be leased for a period *not exceeding three years* for the benefit of the school fund of said Territory, same to be leased by the Governor of the Territory under rules and regulations of the Secretary of the Interior. And thus again it must be observed that the primary purpose of Congress was to provide for a school fund. No provision being made, nothing said about the lessee or his preference right, but it being expressly provided that the lands should be leased for a period not exceeding three years.

In the Act approved May 4th, 1894, 28 Stat. L. 71, Congress made the following provision:

“That the reservation for university, agricultural college, and normal school purposes, of section thirteen in each township, of the lands known as the Cherokee Outlet, the Tonkawa Indian Reservation, and the Pawnee Indian Reservation, in the Territory of Oklahoma, not otherwise reserved or disposed of, and the reservation of public buildings of section thirty-three in each township of said lands, not otherwise disposed of, made by the President of the United States in his proclamation of August nineteenth, eighteen hundred and ninety-three, be, and the same are hereby ratified, and all of said lands and all of the school lands in said Territory may be leased under such laws and regulations as may be hereafter prescribed by the legislature of said Territory; but until such legislative action the governor, secretary of the Territory and superintendent of public instruction shall constitute a board for the leasing of said lands under the rules and regulations heretofore prescribed by the Secretary of the Interior, for the respective purpose for which the said reservations were made, except that it shall not be necessary to submit said leases to the Secretary of the Interior for his approval; and all necessary expenses and cost incurred in the leasing, management and protection of said lands and leases may be paid out of the proceeds derived from such leases.”

The only difference in the foregoing Act and section 18 of the Act of March 3rd, 1891, is that under said section 18, the Governor was authorized to lease the reserved lands under rules prescribed by the Secretary of the Interior, while under the foregoing Act of May 4th, 1894, the Territory was au-

thorized to lease same under such laws and regulations as might thereafter be prescribed by the Legislature of the Territory. But until the legislature enacted laws and prescribed rules, the Governor of the Territory, the Secretary of the Territory and the Superintendent of Public Instructions of the Territory constituted a board for leasing said lands under the existing rules prescribed by the Secretary of the Interior "for the respective purposes for which the said reservations were made, namely, sections numbered sixteen and thirty-six for common school funds; section numbered thirteen for funds for the University and other designated educational institutions; and section numbered thirty-three as a fund for public buildings." Nothing yet said about the lessee or a preference right.

The next legislative act pertaining to the subject, either by Congress or by the territorial legislation, was Council Joint Resolution Number Sixteen, S. L. 1895, 273, to wit:

"That in case the legislative assembly fails to enact legislation governing the leasing of lands subject to lease in this Territory, the present board having control of leasing of public lands be and are hereby authorized to continue the leasing of such public lands. Provided, also, they are authorized to lease lands lying west of range fourteen (14) in such quantities as in their judgment may be most advantageous to the public interest. Approved March 8th, 1895."

Nothing is said in any act so far about a preference right. However, after the passage of the Act of May 3rd, 1891, 26 Stat. L. 1026, which authorized the leasing of such lands for a period not exceeding three years under regulations to be prescribed by the Secretary of the Interior, the Secretary of the Interior adopted a rule of which the following is a part: "In case a new lease is made at the end of the third year, the preference right shall be given the former lessee."

Without deciding the question whether the above clause in the Secretary's regulations exceeded the limitations placed by section thirty-six of the Act of May 3rd, 1891, such question not being material to the decision of this case, this rule of the Secretary is the first expression or first attempt to extend a preference right to the lessee, and whether it exceeded the limitations placed by said act by granting a *preference right* to re-lease when the act says it shall be lease for a period *not exceeding three years*, is immaterial to decide, and with-

out deciding this question, we do decide that said rule does not grant to the lessee a perpetual preference right to lease any of said lands, nor does it impose upon the Territory the obligation to perpetuate the lease granted in the event it appeared to the Territory that it was to its better interest not to re-lease such lands. The rule merely provides in case a new lease is made, without imposing any compulsory obligation to make such lease, but in case a new lease is made at the end of the third year, "the preference right should be given the former lessee."

The next legislation materially bearing upon the question of "preference right" is contained in the Enabling Act and the Constitution of the State. These two acts constitute a contract and compact between the government and the State of Oklahoma. On the part of the government they constitute a grant with certain conditions. On the part of the State they constitute an acceptance of a grant and an acquiescence to the conditions. Previous to this time the title to the land was in the government. After the adoption of the Constitution this completed contract superseded all previous agreements, reservations, rules and regulations with reference to the land and completed its conveyances to the State. Hence, it is immaterial what the various legislative acts had been prior to this time and immaterial as to what regulations may have been promulgated prior to this time.

We have referred to previous acts of Congress and legislative acts of the Territory and the rules and regulations pertaining to this land for two purposes. First, to answer the contentions of defendant in error, Price, that Congress gave to the lessee the absolute right to use and occupy the land in definitely and in perpetuity by reason of the preference right to re-lease under the Secretary's rule; and second, to show that the primary purpose of Congress, throughout all the acts pertaining to these lands, was to provide for a school fund and other designated funds for the State and to enforce subservience to the best interest of such funds.

Sections seven, eight, nine and ten of the Enabling Act, or as much thereof as pertain to the subject involved, are as follows:

Section Seven. "That upon the admission of the State into the Union sections numbered sixteen and thirty-six in every township in Oklahoma Territory and all indemnity lands heretofore selected in lieu thereof, are hereby

granted to the State for the use and benefit of the common schools. * * * There is hereby appropriated, out of any money in the treasury not otherwise appropriated, the sum of five million dollars for the use and benefit of the common schools of said State in lieu of sections sixteen and thirty-six. * * *"

Section Eight. "That section thirteen in the Cherokee Outlet, the Tonkawa Indian Reservation and the Pawnee Indian Reservation, reserved by the President of the United States by proclamation issued August 19th, 1893, opening to settlement the lands, and by any act or acts of Congress since said date, and section thirteen in all other lands which have been or may be opened to settlement in the Territory of Oklahoma, and all lands heretofore selected in lieu thereof, is hereby reserved and granted to said state for the use and benefit of the University of Oklahoma and the University Preparatory School, one-third; of the normal schools now established or hereafter to be established, one-third; and of the Agricultural and Mechanical College and the Colored Agricultural Normal University, one-third. The said lands or the proceeds thereof as above apportioned shall be divided between the institutions as the Legislature of said State may prescribe. Provided, that the said lands so reserved or the proceeds of the sale thereof shall be safely kept or invested and held by the said State and the income thereof, interest, rentals or otherwise, only shall be used exclusively for the benefit of said educational institutions. Such educational institutions shall remain under the exclusive control of said State and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes, or the income or rentals thereof, shall be used for the support of any religious or sectarian school, college or university.

That Section thirty-three, and all lands heretofore selected in lieu thereof, heretofore reserved under said proclamation and acts, for charitable and penal institutions and public buildings, shall be apportioned and disposed of as the Legislature of said State may prescribe.

Where any part of the lands granted by this Act to the State of Oklahoma are valuable for minerals, gas and oil, such lands shall not be sold by the said State prior to January 1st, 1915; but the same may be leased

for periods not exceeding five years by the State officers duly authorized for that purpose, such leasing to be made by public competition after not less than thirty days advertisement in the manner to be prescribed by law, and all such leasing shall be done under sealed bids and awarded to the highest responsible bidder. The leasing shall require and the advertisement shall specify in each case a fixed royalty to be paid by the successful bidder, in addition to any bonus offered for the lease, and all proceeds from leases shall be covered into the fund to which that shall properly belong, and no transfer or assignment of any lease shall be valid or confer any right in the assignee without the consent of the proper State authorities in writing; Provided, however, that agricultural lessees in possession of such lands shall be reimbursed by the mining lessees for all damage done to said agricultural lessees' interest therein by reason of such mining operations. The Legislature of the State may prescribe additional legislation governing such leases not in conflict herewith (34 Stat. L. 273)."

Section Nine. "That said sections sixteen and thirty-six, and land taken in lieu thereof, herein granted for the support of common schools, if sold, may be appraised and sold at public sale in one hundred and sixty acre tracts or less, under such rules and regulations as the legislature of the said State may prescribe, preference right to purchase at the highest bid being given to the lessee at the time of such sale, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of such schools. But said lands may, under such regulations as the Legislature may prescribe, be leased for periods not to exceed ten years; and such lands shall not be subject to homestead entry or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only (34 Stat. L. 274.)"

Section Ten. "That said sections thirteen and thirty-three aforesaid, if sold, may be appraised and sold at public sale, in one hundred and sixty acre tracts or less, under such rules and regulations as the Legislature of said State may prescribe, preference right to purchase at the highest bid being given to the lessee at the time of such sale, but such lands may be leased for periods

of not more than five years, under such rules and regulations as the Legislature shall prescribe, and until such time as the Legislature shall prescribe such rules these and all other lands granted to the State shall be leased under existing rules and regulations, and shall not be subject to homestead entry or any other entry under the laws of the United States, whether surveyed or unsurveyed, but shall be reserved for designated purposes only, and until such time as the Legislature shall prescribe as aforesaid such lands shall be leased under existing rules. Provided, that before any of said land shall be sold, as provided in sections nine and ten of this Act, the said lands and improvements thereon shall be appraised by three disinterested appraisers, who shall be non-residents of the county wherein the land is situated, to be designated as the Legislature of said State shall prescribe, and the said appraisers shall make a true appraisal of said lands at the actual cash value thereof, exclusive of improvements, and shall separately appraise all permanent improvements thereof at their fair and reasonable value, and in case the leaseholder does not become the purchaser, the purchaser at said sale shall, under such rules and regulations as the Legislature may prescribe, pay to or for the leaseholder the appraised value of said improvements and to the State the amount bid for the said lands, exclusive of the appraised value of improvements; and at said sale no bid for any tract at less than the appraisal thereof shall be accepted (34 Stat. L. 274)."

The foregoing provisions of the Enabling Act constitute the grant of the lands in question, and all the conditions pertaining thereto.

The provisions quoted above from section seven shows the purpose of Congress and the conditions imposed as to sections sixteen and thirty-six, to wit: "For the use and benefit of the common schools," and the latter quotation from section seven, *supra*, shows the purpose and conditions imposed by the gift of five million dollars in money, to wit: "For the use and benefit of the common schools" of the Indian Territory, there being no reservations of land on the Indian Territory portion of the new State.

Section eight constitutes the grant, the purpose of the grant and the conditions pertaining to section thirteen, to wit:

"For the use and benefit of the University of Oklahoma and other schools."

Section eight further provides: "That section thirty-three and all lands heretofore selected in lieu thereof, heretofore reserved under said proclamation and Acts for charitable and penal institutions and public building, shall be apportioned and disposed of as the Legislature of the State may prescribe." Section eight provides also that none of the lands granted by the Act, if valuable for minerals, oil or gas, shall be sold prior to January 1st, 1915, but may be leased for the periods and in the manner prescribed in the latter part of section eight, *supra*.

Section nine provides: That section sixteen and thirty-six "*if sold*" may be sold in the manner prescribed by section nine.

Section ten of the Act provides: That said sections thirteen and thirty-three "*if sold*" may be sold in the manner prescribed in section ten.

These sections constitute all the conditions imposed upon the State, and there is no hint in any of said sections, nor in all of them construed together, that the State, unless it elected to do so, was compelled to sell any of said lands. They simply provide that, "*if sold*," they must be sold in the manner prescribed. And as to said lands, the State was not required to sell at all. It could have retained all of said lands and never sold a foot of same, had it so chosen, and yet not violated any of the conditions of the grant. But said grant provided that such lands "*if sold*," should extend a preference right to the lessee in possession, "at the time of the sale," to purchase at the highest bid. This is the only obligation imposed on the State as to the sale, except that under the proviso in section ten, if such lands should be sold at all, then the lands and improvements should be appraised in a certain manner, and the very fact that said section provides that in case the lessee does not become the purchaser, he shall be paid the appraised value of his improvements, shows that Congress had no thought of granting to the lessee the absolute right to purchase, a right which he could enforce against the State whether the State chose to sell the land or not.

The State was not obligated to sell at all, but if it chose to sell, then it should appraise the land at its "actual cash value" and the improvements at their "fair and reasonable value," and in the event the leaseholder refused to pay an

amount equal to the highest bid for the land at its "actual cash value" and the improvements at their "fair and reasonable value," then his rights in the premises were ended. The only right he had left in such case was the right to the appraised value of his improvements. That is, if he refused to meet the best bid, then he had no further rights than the right to recover for the appraised value of his improvements.

Under section 1, article 11, of the Constitution, these lands were accepted by the State under and with the conditions imposed by sections 7, 8, 9 and 10 of the Enabling Act. This completed the transfer of the title from the government to the State. After the adoption of the Constitution the State could dispose of said lands as it saw fit, except that it could not violate the conditions it had accepted, and no condition was contained in the Enabling Act which required the State to sell any of said lands unless it saw fit to do so.

Section 4, article 11, of the Constitution, provides that all lands accepted under such grant and the conditions thereof *may* be sold by the State under rules and regulations prescribed by the Legislature and in conformity with the regulations of the Enabling Act.

This completes the contract between the State and the government. The grant by the government and the acceptance by the State, which supersedes all previous agreements and reservations. The State now has complete control of such lands to lease or not to lease if it so chooses; to sell or not to sell if it so chooses. Should it sell any of them or lease any of them, such sale or lease must not violate the conditions of the grant. Hence, the State, by section 32, article 6, of the Constitution, created the Commissioners of the Land Office composed of the Governor, Secretary of State, State Auditor, Superintendent of Public Instructions and President of the Board of Agriculture, and expressly gave to such Commissioners complete jurisdiction and charge of the sale, rental, disposal and management of the lands in question, and the funds derived therefrom, under rules and regulations prescribed by the Legislature.

Under the Acts of 1907-8, Acts of 1909, and Acts of 1910-11, and subsequent Acts (see chapter 69, R. L. 1910), the Legislature provided for the sale and the leasing and re-leasing of said lands and prescribed the manner and method under which the Commissioners of the Land Office were to be governed.

It is our opinion, after an examination of such statutes and

various acts, that none of them violate any of the conditions imposed by the grant aforesaid, nor do they violate the provisions of the State Constitution. If the statutes do not violate the conditions of the grant nor the provisions of the Constitution, the next question is whether the Commisisoners of the Land Office have violated any statutes under the powers given them by the Constitution.

This question must be determined by the statutes, the Constitution and the terms of the respective leases held by the Magnolia Company and by the defendant in error, W. T. Price. Neither the Magnolia Company nor Price can claim anything beyond the provisions of the law and the terms and conditions of their respective lease contracts.

Article 111, chapter 69, R. L. 1910, authorizes the Commissioners of the Land Office to segregate oil, gas and other mineral lands and to reserve the rights for the State to all oil, gas and other mineral lands from the surface lessees, and authorizes said Commissioners to lease said lands for oil and gas and other mineral purposes and prescribes the conditions and regulations under which the same may be done.

As appears from the record herein, the Commissioners duly segregated the lands in question from sale because of the oil and gas supposed to exist therein, and the enormous product of oil and gas that has been taken from the tract in question conclusively warrants the Commissioners in so segregating said tract from sale.

The land, at the time of the trial of this cause in the court below, as appears from the record, had five or six producing wells, each producing great quantities of oil, the royalties from which amount to a hundred fold more to the State than the sale of such land for agricultural purposes would have amounted to. Under the lease through which Price held possession, by the terms of which he is bound and beyond which he can claim no rights, no mention is made of his right to the oil and gas or other minerals. The only rights he had were those defined by his lease contract with the State and those defined by the laws of the State, which rights, as defined both by the laws and by his lease contract, are no more than the preference right to re-lease such land for agricultural purposes at the expiration of his lease, if the State elects to re-lease it, and the right to purchase same when sold by the State if the State should sell it. He has no right, under the law nor under his lease contract, to force the State to sell such

lands until the State elects so to do. Neither under the terms of his lease nor under the law could he force the State to re-lease such lands to him at the expiration of his present lease if the State elected no longer to lease same for agricultural purposes, nor could he force the State to sell until the better interest of this particular State fund would be better served by a sale.

The State is bound by the terms of the Constitution and by the terms of the grant to protect him in his preference right to re-lease if the land is re-leased, and the preference right to purchase, at the time of sale, if the land is sold. This is as far as the State is obligated to the lessee without violating the conditions of the grant itself, the uppermost purpose in the grant being to protect the school, educational and public building funds, for which purposes the land was granted to and accepted by the State.

The Commissioners of the Land Office could not have acted in good faith to the trust imposed in them by the Constitution and by the statute if they had advertised this land, believing that it contained oil and gas products which would pay a hundred fold more to the State than the sale of the land would pay, but, as a matter of course and as a matter of law, had the State sold and conveyed such land to the lessee, then the lessee would have had the right to the oil and gas therein, but the State has not sold it and the lessee has not purchased it, and until the land is sold and purchased by the lessee and fee simple title conveyed to the lessee, such lessee has no right to the oil and gas or other minerals therein.

It appears from the record and suggested in the briefs that at one time this land had been appraised and advertised for sale as prescribed by law, but withdrawn from the market before the sale was made, and that if Price had any right to enforce a sale he should have procured such right through a proceeding in mandamus for the enforcement of the sale. Whether this proposition be true or not we deem immaterial. The fact is that he did not, therefore it is unnecessary to decide whether, under the terms of his lease and the provisions of law, he could have enforced the sale of such lands until the State elected to sell same. Nor is it necessary to decide that if the lands had been sold and conveyed to Price by the Commissioners of the Land Office, knowing that it was swimming in rich pools of oil and gas, whether they could have been

criminally prosecuted for making such sale, knowing such state of facts. The fact is that they were apprised of the oil values of the land, and in consonance with the trust reposed in them, they acted for the better interest of the State.

We have examined the various acts of Congress and all of the acts of Congress upon this question, including the Enabling Act, and have also examined and are reasonably familiar with the provisions of our State Constitution. We have also examined the various acts of the State Legislature with reference to the sale and leasing of the public lands, and have examined the form, terms and conditions of the lease contract under which defendant in error, Price, claims, and are of the opinion that neither under the terms of his lease, the provisions of the statutes, the Constitution, nor the conditions of the Enabling Act, when applied to the facts in this case, is he entitled to the oil and gas therein, nor entitled to anything with reference to the oil and gas lease in question further than that prescribed by law, to wit: Any and all damages that he may sustain to his agricultural lease by reason of the operation of said oil and gas wells. If the drilling operations upon this land and the operation of the wells thereon have damaged him to any extent in the free exercise of his agricultural lease, he is entitled to such damages as he has sustained, but he is not entitled to the oil and gas nor the royalties from the wells, nor authorized to unduly interfere with the operations of same.

It is, therefore, our opinion that the trial court erred in dissolving the temporary injunction granted in the first place and in rendering the judgment herein appealed from.

The judgment is therefore reversed and the temporary injunction against defendant in error, W. T. Price and his wife, Ora Price, is hereby made perpetual and the said defendants in error are hereby perpetually enjoined from interfering with the operations of said oil and gas lease, and the State is hereby decreed to be entitled to all royalties of oil and gas produced under said lease, and defendants in error are decreed to be entitled to such damages as they may have sustained to their agricultural lease by reason of the operation of said oil and gas lease.

All the Justices concur.

(Filed in Supreme Court of Oklahoma April 5, 1922. William M. Franklin, Clerk)

In the Supreme Court of the State of Oklahoma.

Case No. 12,243

MAGNOLIA PETROLEUM COMPANY ET AL., Plaintiffs in Error,

vs.

WILLIAM T. PRICE ET AL., Defendants in Error.

Preface to Petition for Re-Hearing.

The formal statement of assignments may be briefly summarized in the following points:

FIRST: The Court acknowledges in the opinion that Price's preference right to re-lease and to buy must be protected and yet permits the Magnolia oil and gas lease to stand, which lease must be a lease or sale to the Magnolia of the rights that the opinion says Price has, without his consent and without opportunity for him to exercise his right to re-lease or to buy.

SECOND: That the opinion overlooks the law commanding the sale of Sections 33 and fixing all the terms thereof (Sess. L. 1909, p. 448), and commanding the Commissioners to execute same in penalty of felony.

THIRD: That the opinion applies the Act of 1908, Sess. L. p. 4, to lands and lessee having preference right attached, which said statute was not so intended, and applies it to extinguishment of such right, which results:

- (a) In impairment of lessees' contract.
- (b) In taking property without due process.
- (c) In taking property without compensation.
- (d) In taking private property for private uses.

All of which are in violation of the Constitution of the United States.

FOURTH: That action by the State and action by the Commissioners is not distinguished and the application made in this opinion of the action of both violates the United States Constitutional guarantees.

In the Supreme Court of the State of Oklahoma.

Case No. 12,243

MAGNOLIA PETROLEUM COMPANY, a joint stock association;

John Sealy, E. R. Brown, R. Waverly Smith, E. E. Plumly and W. C. Proctor, Trustees, Plaintiff in Error (and plaintiff below),

STATE OF OKLAHOMA, ex rel. Commissioners of the Land Office of the State of Oklahoma, and ex rel. S. P. Freeling, Attorney General of the State of Oklahoma, Plaintiff in Error (and intervenor below),

VS.

WILLIAM T. PRICE and ORA PRICE, Defendants in Error.

Petition for Re-Hearing.

Come now William T. Price and Ora Price, and move the Court to grant a rehearing in the above entitled cause from the opinion and judgment of this Court rendered on the 21st day of March, 1922, which judgment and opinion of this Court materially affect the substantial rights of the defendants in error upon the following grounds, to wit:

(1) The Court overlooked the Rules and Regulations adopted by the Secretary of the Interior, approved by the Act of Congress giving to the lessee the preference right to re-lease the land, and their effect as investment of right.

(2) The Court overlooked the lease contracts made pursuant to the Rules and Regulations and the Acts of Congress by the Territorial Board of School Land Commissioners, in which the preference right to re-lease the lands was specifically granted to the lessees; copy of one of such leases appearing on record, pages 247-250.

(3) The Court overlooked the case of *Noel v. Barrett*, 18 Okla. 304, 90 Pac. 12, and *Clark v. Frazier*, 117 Pac. (Okla.) 589; in each of which cases this Court has held that the preference right is a property right. The Court also overlooked that by reason of these cases the construction of the law in force at that time by this Court in such decisions has become a rule of property and is controlling in the case at bar.

(4) The Court overlooked the fact that in the advertising of leases on school lands in territorial days, and under the laws then in force, the leases were advertised and the person bidding thereon was required to pay the rental as appraised, together with such bonus as he may see fit to offer for the rights under the lease; and that the Government of the United States acting under the legislation of Congress and the Territorial Board of School Land Commissioners acting under the

power given them by Congress, accepted such bonus money and persons bidding paid such bonus moneys for the purposes of obtaining said lease, and the preference right to re-lease such lands that went with it.

(5) The Court overlooked the provisions of Section 8 of the Enabling Act which provides that the State may only be permitted to lease known mineral lands for a *period of five years only*. The Enabling Act did not grant a preference right to an oil and gas lessee to re-lease nor to buy. The Magnolia lease in the case at bar is for five years and as long thereafter as oil and gas may be found clearly violative of the five-year limitation provision in Section 8 of the Enabling Act.

(6) The Court overlooked Section 10 of the Enabling Act which gave to the lessee the preference right to purchase the lands when sold without regard to their mineral character insofar as the lands involved in this case are concerned, the lands here being Section 33.

(7) The Court overlooked the opinions of the Supreme Court of the United States holding that the mineral or non-mineral character of lands granted by the Government are to be determined as of the time of the grant. Such cases are:

Colorado Coal & Iron Co. v. U. S., 123 U. S. 307, 31 L. Ed. 182.

U. S. v. Iron & Silver Min. Co., 128 U. S. 673, 32, L. Ed. 571.

Shaw v. Kellogg, 170 U. S. 312, 42 L. Ed. 1050.

Wyoming v. U. S., 65 L. Ed. 453.

Diffenback v. Hawk, 115 U. S. 393, 29 L. Ed. 423.

Green v. Robinson, 210 S. W. (Tex.) 498.

(8) The Court overlooked the provisions of Section 10 of the Enabling Act which enacted certain Rules and Regulations for the sale of the lands when sold and permitted the *Legislature of the State only* to make certain limited other rules and regulations, and which Act nowhere authorizes the Legislature to delegate such powers to the Commissioners of the Land Office.

(9) The Court in its opinion fails to distinguish between the authority granted to the Legislature of the State of Oklahoma by the Enabling Act, which is or would be the Act of the State, and the unauthorized acts of the Board of School Land Commissioners which are not the acts of the State. And on the question as to whether or not the Legislature can dele-

gate the authority granted it by the Enabling Act, the Court overlooked the cases as follows:

Betts v. Commissioners of Land Office, 27 Okla. 64, 110 Pac. 766.

Haskell v. Haydon, 126 Pac. 232, 33 Okla. 578.

Errien v. U. S., 251 U. S. 41, 64 L. Ed. 128.

Walpole v. State Bd. of Land Com., 163 Pac. (Colo.) 848.

(10) The Court declares (Written Op. p. 14; App. Ct. Rep. p. 512, Col. 2), that the Constitution gave the Commissioners "complete jurisdiction and charge of the sale and leasing of said lands." The Court here overlooks the Constitution which is utterly silent in "jurisdiction" complete or incomplete, but limits them to "charge of sale, etc., under the rules and regulations prescribed by the Legislature." Hence, they had no "rule" power or "regulation" power.

Our Court in *Haskell v. Haydon*, 33 Okla. 518, 126 Pac. 232, said of the Commissioners and Legislature that in the Legislature "lies the sole authority to prescribe rules and regulations," relating to these lands. It follows, therefore, that if the "sole authority" lies in the Legislature that none of it lies in the Commissioners. It follows therefore that they have no "jurisdiction" and are "in charge" of the sale and leasing as merely administrative officers of the law.

The Court overlooked this controlling authority cited in our brief.

(11) The Commissioners having no "jurisdiction," then it remains to see what the State by legislation has done.

The Court in its opinion, page 8, says of the Enabling Act and Constitution: "On the part of the Government, they constitute a grant with certain conditions. On the part of the State they constitute an acceptance of the grant and acquiescence to the conditions" (Op. p. 8, middle, 17 Okla. App. Ct. Rep. 510, col. 1 middle). Then, if the grant carried "conditions" and if the state "acquiesced" in them, how could the State have "complete control" to avoid or deny the conditions? It could not and the Court so recognizes in words on page 14 (17 App. Ct. Rep. 512, col. 1 bottom), where the Court says:

"Should it sell any of them, or lease any of them, such sale or lease must not violate the conditions of the grant."

Now, one of the "conditions" was the preference right

entailed on the land, and running to the lessee, either to release, or to purchase. Then how could it be either leased or purchased by the Magnolia against Prices' said right?

A preference right is an option; a property right, and a valuable one.

Noel v. Barrett, 18 Okla. 304, 90 Pac. 12.

It is subject to purchase and sale.

Clark v. Frazier, 177 Pac. (Okla.) 589.

It is not to be extinguished except by the method contained in the grant thereof.

Slusher v. Simpson, 67 S. W. 380, 23 Ky. L. R. 252,

It is operated to the exclusion of others.

Bratton v. Commissioners, 22 Kans. 674.

It is a vested right.

Wing v. Dunn, 127 S. W. 1101 (Tex.).

White v. Douglass, 11 Pac. 860 (Calif.).

One who purchased from another holding under law that gives preference right is entitled to same privilege and benefit.

Twigg v. State Board, 75 Pac. 729 (Utah).

Such an one has the rights which the law gives him regardless of any instrument, or terms thereof fixed by the agents of the law.

Burke v. So. Pac., 234 U. S. 669, 58 L. Ed. 1527.

Therefore, the law of Congress having given this right and the State Constitution having accepted subject to this right, no action of the Commissioners could take it away. The law making power itself could not take it away. It is a statutory contract in which the lessee had no voice except to accept under it (*Buske v. So. Pac.*, 234 U. S. 669, *supra.*), but when accepted by lessee as here, even Congress or the Legislature could not deprive.

State ex rel. v. McPeak, 47 N. W. 691 (Neb. by Maxwell).

The Supreme Court says that to do so "impairs the obligation of contract with the State which had been consummated by a compliance with the Act (a former law) and therefore violative of the Constitution of the United States."

We invoked the protection of the Constitution of the United States in our pleadings, arguments and briefs and now again invoke its protection. It was overlooked by the Court.

(12) The Court overlooked the proposition of the legal effect of the lease, with preference right of renewal so long as lessee complies with the lease, and the preference right to

buy, if sold, and overlooked the controlling authorities cited thereon.

DePeyster v. Michael, 57 Am. Dec. 470.

(13) The Court overlooked the proposition that the Commissioners of the Land Office can not change the lease terms, conditions or provisions as fixed by law by exacting from the lessee or giving to the lessee an instrument called "lease" containing provisions, stipulations, limitations, grants, or reservations not expressed in the law.

State ex rel. v. McPeak, 47 N. W. 691 (Nebr.).

Wing v. Dunn, 127 S. W. 1101 (Tex.).

State ex rel. v. Buttzville Bank, 141 N. W. 105 (N. Dak.).

Burke v. So. Pac., 234 U. S. 669, 58 L. Ed. 1527.

Bratton v. Cross, 22 Kans. 674.

(14) The Court overlooked the proposition that when the legislative authority grants use, or title, or means of acquiring title to public lands with express privileges or opportunities, and the grantee takes thereunder that the grantee's rights are contractual by nature and cannot be impaired by subsequent legislation or administration because protected by the Constitution of the United States.

State ex rel. v. McPeak, 47 N. W. 691.

Burke v. So. Pac., 234 U. S. 669, 58 L. Ed. 1527.

(15) The Court overlooked the proposition that when the Legislature of 1909 passed Session Laws 1909, page 448 *et seq.* that such statute, containing as it does all the proposed terms and conditions of the sale, constituted a legislative sale; and that it only remained for the Commissioners to carry it out, and their neglect and refusal to do so can not prejudice the rights of one against whom their design or neglect is directed, and that the beneficiary under such legislation takes an enforceable and defensible equitable title. Then he has done all the law imposed on him.

Lytle v. State of Ark., 9 How. 333, 13 L. Ed. 153.

(16) The Court overlooked the proposition that statutes or legislation unexceptional on face, and having a legitimate field of operation, may be so construed or applied by the executive or judicial action, or by both or either, as to impinge the constitutional rights and protection of the citizen affected and thereby become unconstitutional as to him.

(17) The Court overlooked the fact in law that the alleged segregation statute of 1908, Sess. L. p. 448, was repealed by Sess. L. 1909, p. 448, providing sale of all of Section 33.

(18) The Court overlooked the trust nature of State's title and that lessee of Section 33 is a beneficiary under the grant as well as the funds to which use they are dedicated.

Ervien v. U. S., 251 U. S. 41, 64 L. Ed. 128.

(19) The Court overlooked the point that here the Magnolia claims under a lease that "grants" the oil and gas "in and under" certain lands. Such is a sale, if valid, is of "unlimited duration"; and of a free hold interest in the land.

Texas Co. v. Daugherty, L. R. A. 1917-F, p. 989, and cases cited.

Hoyt v. Fixico, 175 Pac. 517.

Then Prices' land was sold, if valid, to the Magnolia in disregard of his preference right to purchase when sold.

(20) The Court says (opin. p. 15) that the Commissioners "*duly segregated the lands*" and the "*enormous product of oil conclusively warrants,*" etc. Of course, if amount of product of oil measures compliance with the law, that is proof enough. But their warrant is measured by the *terms* of the *law*, not the subsequent results of the drill. That is the difference between law and business. One is measured precedent—the other subsequent.

This controlling statute, if it is valid, was also overlooked as to its terms. But was it valid as to the Prices?

The Legislature said if it "is known to contain oil or gas" or "where deemed valuable for oil and gas" the Commissioners shall enter of record their *finding*, declaring such character exists."

Here then we have a law that allows an officer to make a "finding" of oil or gas character, on a "deem." This is contrary to nature. This Price land was not "known" to contain oil and gas until 1921. It was never "deemed" so, but in 1915, by *Resolution*, the Board arbitrarily "declared valuable for mineral purposes" (Rec. p. 153) (Defts' brief p. 4). Not because it was "known" or "deemed" to be mineral character as by *statute* required, but because: "*Whereas, we have had offers from reputable parties to place oil and gas bids on the following unsegregated school lands.*" (It was not school land.) This did not comply with the law, even if the law be held otherwise valid in itself, as legislation.

This statute made no provision for notice to Prices', the lessees, of such contemplated "finding" of "mineral character" which would remove them from a preferred class into

a non-preferred class; that would take their homestead from them; made no provision for hearing as preliminary to such "finding." No notice was to be, or was given; no hearing had. It was perfectly arbitrary. And to give effect to the action of the Commissioners is the taking of property without due process of law; without compensation, and violates the Constitution of the United States. This, too, was called to attention of Court and was also overlooked.

If it is decided herein that Sess. L. of 1908, p. 490, or any other statute, or all other statutes of Oklahoma, "authorize" the segregation of this defendants' land in Section 33 in that part of the State formerly Oklahoma Territory, and under lease and occupied by defendants in error as public land lessees, against the lessees' preference rights therein granted under the Enabling Act and the Constitution of the United States, and granted to and acquired by defendants in error in territorial history by compliance with the laws, rules and regulations, with the force of law in territorial times; and that notwithstanding the preference right granted and recognized in Session Laws 1909, page 448, Section 3b; then, that to the extent that either the statute, or statutes of the State, or the construction or application thereof by the Commissioners, or this construction or application thereof by this Court, or any other Court, contravenes such right, it impairs the contract of these defendants in error and is in violation of the Federal Constitution, and is void, and this opinion, we think, so does.

That under this contention, and under the Statute of March 1, 1919, the defendants in error are entitled to have their case heard on oral argument before the whole Court. That this right has been denied defendants, and is a denial to defendants in error of due process of law provided.

(21) That this opinion recognizes in Prices, lessees, their "preference right to re-lease if the land is re-leased, and the preference right to purchase, at the time of sale, if the land is sold. This is as far as the State is obligated to the lessee without violating the conditions of the grant itself," and yet denies him enforcement thereof, and relegates him to "damages to his agricultural lease," without regard to compensation for his right, and is therefore an unconstitutional application or construction of the law, impairs defendants' contract, takes their property without due process of law, and without compensation, and is unconstitutional and void under United States Constitution. That even if the Legislature

could and did authorize the leasing for oil and gas purposes of lands not known to contain oil or gas, yet it did not do so, or attempt to do so, in violation of lessee's preference rights; and therefore if the legislation was and is otherwise, or on face valid, that as applied in this case by this opinion and to these defendants, it is unconstitutional and void for said reasons.

(22) That this opinion extends even the statute beyond its terms, and is extra-judicial and by its terms and order impairs defendants' contract under the law, and takes defendants' property without compensation or due process of law, and is unconstitutional and void.

(23) The Magnolia lease was beyond the law, and void. The Stat. of 1909, p. 490, provided for a lease "not exceeding five years, with suitable provision for preference right or re-lease for second term of five years."

This violated the provisions of the Enabling Act which limited leasing of *known* mineral lands to "not exceeding five years" (Enabling Act, Sec. 8) and prohibited legislation in conflict (Enabling Act, Sec. 8, last proviso).

The Magnolia lease in suit is lease for "five years and as long thereafter" as oil and gas may be found. This is an alienation, not a lease. *Hoyt v. Fixico* (Okla.), 175 Pac. 517. This violates the Enabling Act, Section 8, and violates the trust accepted by the State, and is *void*. This, too, was called to the Court's attention and overlooked.

Section 8 of the Enabling Act, last sentence, prohibited any legislation "in conflict" therewith. This statute for a "second term of five years," and this lease "five years and as long as oil or gas is produced," both expand and conflict with the absolute five year limitation. This, too, was overlooked.

In 1913, by Revised Laws, this language is changed in (Sec. 7197) to "preference right to re-lease for a second term of five years."

Now, if this land had come to the State untrammelled with conditions, this was probably a fit subject for legislation. But here it is not. This, too, was by the Court overlooked.

(24) The Court declares and finds that the State by its Legislature has by legislation of 1907-08 and 1910-11 provided for the sale of said lands. Opinion p. 14, 17 Okla. App. Ct. Rep. 512, second column.

This was the claim of defendants in error, but the Court says it is its "opinion" that none of them violate the con-

ditions imposed by the grant (Enabling Act). The Court proceeds then to declare that Price, the lessee of this land, had no right therein, that he could protect from plaintiffs, which claimed under an oil lease made in 1919.

The Court here lastly overlooks the Statute of 1909 (Sess. L. 448-9, Sec. 1. App. Mch. 2, 1909), which said the Commissioners "shall sell" these lands and prescribe all the conditions of appraisal, advertisement and terms of payment. That Statute said "The Commissioners * * * shall dispose of, sell and convey, subject to the limitations, etc., of the Enabling Act, in this Act * * * all the following enumerated lands * * * all lands," etc.; also "all lands embraced in Section 33 in former Oklahoma Territory," etc. In Section 3b, it is enacted "any lessee holding a lease on any lands described in Section 1 of this Act (excepting New College lands), (and this 33 is not new college land) shall have the preference right to purchase 160 acres so leased at the highest bid," etc. (p. 451).

This statute, Section 1 (Sess. L. 1909, p. 448), provides for the sale "subject to such

Limitations

Exceptions

Conditions

Rules

Regulations and

Instructions

as provided in Enabling Act, in this Act," or amendatory acts.

Now, what were the limitations, etc., in the Enabling Act?

In Section 10, it is provided that Section 33 "if sold," may be sold in (a) 160 acre tracts; (b) under such rules and regulations as the Legislature may prescribe; (c) Preference right to purchase at highest bid being given to lessee."

The "if sold" proposition is settled by the above quoted law that the Commissioners "shall sell" the sections number 33; also by this opinion, p. 14, where this Court says "under the Acts of 1907-08, 1909, 1910-11, etc., the Legislature provided for the sale." It being so disclosed, we fail to see why this Court consumes pages of opinion to demonstrate the obvious condition that the State could not be *made* to sell this land. Such question was never presented.

Defendants in error alleged that that bridge had been crossed by Act of 1909. That the State had elected to sell;

had legislated to that effect and charged the Commissioners with the duty of carrying out that law (Sess. L. 1909, 448-9, Sec. 1, *et seq.*). That law fixed all the terms and conditions (see our brief, pages 99-103). It preserved this preference, so by what authority is it now denied?

(25) If this Statute (Sess. L. 1909, p. 490) is invalid as to Prices, that too was overlooked. The Federal law opened land to pre-emption, excepting "known minerals." The Court said that that required "ascertained coal deposits of such extent and value as to make the land more valuable as a coal mine," and that mere "indications of coal beds as shown by outcroppings" was insufficient.

Colo. C. & I. v. U. S., 123 U. S. 307, 31 L. Ed. 182 (brief pa. 67).

Also, that outcroppings did not prove a lode or vein to constitute "known minerals."

U. S. v. Iron & Silver Min. Co., 128 U. S. 673, 32 L. Ed. 571.

Other cases consistent were cited in our brief at pages 68, 69 and 70.

Now, this was the law in light of which the Enabling Act, Section 8, referred to "lands valuable for minerals."

These controlling authorities were cited and overlooked. Can it be then that our Commissioners can "whereas we have had offers to place oil and gas bids," and from said "whereas" declare a land to contain oil and gas, to the prejudice of the preference right holder?

This statute, if otherwise valid, did not contain any recognition of Prices' preference right to re-lease (the lands for mineral) if they were mineral, or in any way respect his preference rights to either lease or buy, if mineral, nor provide any way to extinguish his rights therein, statute therefore, as to him, violated the Constitution of the United States and impaired his contract rights in the land, given by Act of Congress (Enabling Act) and accepted by him.

(26) The Statute of 1908, p. 490, *et seq.* and Rev. L. 1910, Sec. 7199, and the Resolution of the Commissioners of 1915, Rec. 153 (Defts' brief p. 4), if given the effect they are by this decision and as applied by this decision, takes defendants' property without notice, or hearing, or opportunity to be heard, or compensation, and therefore is without due process of law and prohibited by the Constitution of the United States, which defendants invoked and yet invoke, and which United

States Constitution, a controlling enactment, was by the Court also overlooked.

(27) We have above quoted the opinion that "the State is bound to" protect him (Price) in his preference right to re-lease if the land is leased, and the preference right to purchase if the land is sold" (Op. p. 16, 17; Ok. Ap. Ct. Rep. 513, 1st col. middle).

Now, this is all we contend for, as a matter of law. Now, we want it as a matter of fact. The order denies him everything but damages to his "agricultural lease" which has not been paid or tendered (Opin. last page).

Now, when did the transition take place from the State being "bound to protect in his preference right" to now being bound over to allow only "damages" for "injury to his agricultural lease by operation of the wells" (Opin. p. 18). We find nothing between pages 16 and 18 to account for this change of relief. This land was either leased to the Magnolia in violation of his preference, or sold to it in violation of his preference.

Hoyt v. Fixico, 175 Pac. 517.

(28) Much of the opinion relates to "subservience to the fund," but none to the subservience of the lessee, who contributed to the fund through eighteen years of toils, or of his crops, or orchards, or fences or buildings, or other things of value contributed to the land.

The preference right was in subservience to the fund; and to the lessee. To encourage him to make it a homestead to which he could look with permanence, instead of a "chain harness and shuck collar" tenancy. The Governor's Message of 1907, recognized this. He said, "I recommend immediate legislation, etc. * * *." "These lessees have a right to know what the future has in store for them." The Legislature responded with the "shall appraise" statute of 1908, and the "shall sell" statute of 1909, with preference right to 160 acre tracts. This "shall sell" has never been repealed.

Legislation respecting public lands is to be construed favorably to the actual settler.

Ard. v. Brandon, 156 U. S. 537, 39 L. Ed. 529.

Wyoming v. U. S., Adv. Op. Sup. Ct. dated May 1, 1921, 65 L. Ed. 453.

and many others.

(29) Now, a thought on the Segregation Statute of 1908, Sess. L. Ch. 49, p. 490.

If this statute gave the power of segregation of any tract which the Commissioners should "whereas we have had offers to place oil bids" on, without any regard to the lessee in possession with preference right to lease or purchase, it was repealed by Session Laws of 1909, saying they "shall sell" * * * "all" lands embraced in Section 33 in that part of the State formerly known as Oklahoma Territory and granted to the State for charitable and penal institutions and public buildings.

If all of the 33, including this one, "shall be" sold as enacted in 1909, how can it be reserved, segregated and diverted to an oil company in 1919, by any pretense whatever, by the Commissioners. Only the "known mineral lands" were reserved by legislation and then only until January 1, 1915 (Sess. L. 1909, p. 490, Sec. 1, Rev. L. 1910, Sec. 7144). The Commissioners by said Act, had no such power to enlarge it to apply to this land.

(30) This Court overlooked the one point decisive of this case. That is, that since it is decided that the Prices had a preference right to re-lease if leased, and to purchase *when* sold, that such preference right was a continuing one, running with the land so to speak, and that he could abide in the security thereof and await either eventuality, knowing that so long as it was leased he was secure in his preference and that whenever sold, if the lessee then had the preference right to buy, he was secure in his preference. That any legislation or construction, or application thereof, that denied or impaired this right violated the Constitution of the United States against impairment of contract, and was unconstitutional and void.

That any legislative construction or application of law that took from him this right, conceded by the opinion to be his, and gave the land to another, relegating him merely to recovery of damage for injury to his "agricultural lease" without regard to his loss of right was and is a taking of his property for private uses without due process or compensation and is unconstitutional and void.

(31) The trial court found all issues of law and fact for defendants, which covered that defendants had preference right to purchase at highest bid. This is the one controlling, important question presented by the case and overlooked by the Court.

The defendants, William T. Price and Ora Price, insisted:

- (1) That they being lessees, had the preference right:
- (a) To re-lease so long as land continued to be leased.
- (b) To purchase, when the State decided to sell.

One or the other of these conditions of fact must always exist: The land (in section 33) could never be in any other state than as land to be leased, or land to be sold. It is unchallenged that Price held this preference right if it had any value, and was capable of being held.

This Court in its opinion said (p. 513):

"The State is bound by the terms of the Constitution and by the terms of the grant to protect him in his preference right to re-lease if the land is re-leased, and the preference right to purchase, at the time of sale, if the land is sold. This is as far as the State is obligated to the lessee without violating the conditions of the grant itself."

This is all Price ever claimed.

But applying that the Court said he was not "entitled to anything with reference to the oil and gas lease in question further than that prescribed by law; any and all damages that he may sustain to his agricultural lease by reason of the operation of the said oil and gas wells."

(32) Now, in this declaration, the Court overlooks the preference right he held either to lease as long as the land was leased, or to buy when sold. The Magnolia was operating on that homestead by one of two rights, either by lease, or by purchase, or without right.

The Court just finished saying he had a preference right to lease or to buy. Yet without showing any extinguishment of this right, *orders* that he was not entitled to anything but damages for injury by the Magnolia, which is nowhere found to have any right. How it arrived there the opinion fails to disclose. Here the Court overlooked the controlling statute.

Enabling Act, Sec. 10, and Law of 1909, p. 448, Sec. 1.

The right claimed was one arising under congressional legislation of Enabling Act and the Constitution of the United States, and was directly presented to the Court and the protection of these instruments directly invoked, and defendants was entitled to have that question and the authorities cited considered and applied.

The Court having gone thus far in words in recognizing defendants' preference right, it goes the other way in deed and denies them everything but damages, and thus denies defendants a right claimed under the Constitution of the United States, the Act of Congress (Enabling Act).

(33) That this cause was assigned for oral argument and submission to only five members of this Court and thereby defendants in error were denied due process of law. Copy of records is hereto attached.

(34) The Legislature of Oklahoma, by Act of April 8, 1908 (Session Laws 484-5):

(a) Extended by law all leases, etc. (not challenged here).

(b) It made it the "duty of the Commissioners * * * to cause an appraisement to be made 'of lands' granted to the State for educational and building purposes." This was done and is known as the "1908 appraisal."

This is important in this case, as often recalled in the briefs.

This legislation was April, 1908, and the Prices bought out a preferred right lessee in the fall of 1908 (Rec. 195, 196, brief 12-13), and the Legislature on March 26th, 1909, passed the "shall sell" law (Sess. L. 1909, 448-9, brief p. 105), imperatively commanded: "Section 4, said lands and improvements thereon *shall be sold under the appraisement of 1908* made and returned to the Commissioners," etc. (Defts. in Error brief, p. 107). Such appraisement was made and approved. Defendants held under this state of the law, and their rights were not subject to impairment by subsequent legislation.

Burke v. So. Pac., 234 U. S. 669.

State ex rel. v. McPeak, 47 N. W. 691,

and other authorities above.

This proposition and controlling authorities were overlooked by this Court.

This is proven by the Court's declaration on page 8 (seven lines from bottom) where it declares it "immaterial what the various legislative acts had been prior to this time, and immaterial as to what regulations may have been promulgated prior to this time." This is contrary to these authorities.

(35) We find then at Statehood, Section 10 of the Enabling Act, preserving to the lessee the "preference right to purchase at the highest bid * * * at the time of such sale" and definitely fixing the rules and regulations for leasing and for appraisement for sale, and requiring the high

bidder in case the lessee does not take the land, to pay for the improvements on the land at the appraised value, and providing that no bid for any tract at less than the appraisement thereof shall be accepted. The whole scheme for the sale of the land is laid out in Section 10. The few small limited powers that were given to the Legislature were in execution of the trust and not in violation of the terms of Section 8 or any other section of the Enabling Act. At any rate, such limited powers were given to the Legislature and not to the Commissioners of the Land Office. The Constitution accepted the terms and limitations of this grant. The Court in this opinion says that it is a compact and that it is the duty of the State to protect the rights of the lessee. But the fault in the opinion is that it is entirely predicated on the false premise that the State had not elected to sell these lands, and that the lessee could not force the State to sell them. This proposition was not in the case; was never argued in the case and is not controlling in the case for the reason that the State has elected to sell the lands but the Commissioners as executive officers of the State have neglected to perform their duties under the law. Let us see about it.

Section 1 of Article 2, Chapter 28, of the Session Laws of 1909, provides:

"The Commissioners of the Land Office *shall dispose of*, sell and convey subject to the limitations, exceptions, conditions, rules, regulations and instructions as provided in the Enabling Act, in this Act or any amendatory act hereof * * * all lands owned by this state * * *,"

known as Indemnity Lands, and also Section 33 in old Territory of Oklahoma. There are no exceptions in this Sales Statute of mineral lands. As evidence of the fact that the Legislature intended to include and sell the mineral lands observe the proviso at the end of Section 1, which the Court overlooked, and which reads as follows:

"Provided further, that where any part of any of the above enumerated and described lands are known to be valuable for mineral, including gas or oil, such part of said lands shall not be sold prior to January 1, 1915."

This is not a reservation of mineral lands from sale, or authority to reserve, but fixed the time of the sale different from the others.

The mandatory character of this statute is intensified by the penal provisions thereof.

Wherefore, defendants in error pray that the Court grant a rehearing herein and that upon rehearing and reconsideration, that this opinion be vacated and set aside, and that the judgment of the lower court be affirmed, as in justice and equity may be due the defendants in error, and for all other and further proper relief.

STUART, SHARP & CRUCE,
STEVENS & RICHARDSON,
BLAKE & BOYS,
Attorneys for Defendants in Error.

Thereafter, at the April, 1922, term of said Supreme Court, on the second day of May, 1922, the following proceeding was had in said cause, to wit:

No. 12,243.

MAGNOLIA PETROLEUM COMPANY

vs.

W. T. PRICE ET AL.

And now on this day it is ordered by the Court that the petition for rehearing filed in the above cause be, and the same is hereby denied.

Thereafter, on May 9, 1922, the following proceeding was had in said cause, in said Supreme Court, to wit:

No. 12,243.

MAGNOLIA PETROLEUM COMPANY

vs.

W. T. PRICE.

And now on this May 9, 1922, it is ordered by the Court that the mandate issued in this cause be recalled and stayed pending appeal to the Supreme Court of the United States.

(Filed in Supreme Court of Oklahoma, July 11, 1922. William M. Franklin, Clerk

In the Supreme Court of the State of Oklahoma.

MAGNOLIA PETROLEUM COMPANY, a Joint Stock Association,

John Sealy, E. R. Brown, R. Waverly Smith, E. E. Plumly, and W. C. Proctor, Trustees,

STATE OF OKLAHOMA, *ex rel.* Commissioners of the Land Office of the State of Oklahoma, and *ex rel.* S. P. Freeling, Attorney General of the State of Oklahoma, Interveners, Plaintiffs in Error,

vs.

WILLIAM T. PRICE and ORA PRICE, his wife, Defendants in Error.

No. 12,243.

Assignment of Errors.

Come now the defendants in error, William T. Price and Ora Price, and respectfully submit that in the record, proceedings, decision and final decision of the Supreme Court of the State of Oklahoma in the above entitled matter, there is manifest error, and in connection with the petition for writ of error herein makes the following assignment of errors which the defendants in error, William T. Price and Ora Price, aver occurred in the final order and judgment herein, dated the 21st day of March, A. D., 1922, re-hearing denied the 3rd day of May, 1922, as follows, to wit:

I.

That the Court erred in holding that the provisions of the Statutes of Oklahoma, to wit, Act of May 26, 1908, appearing Session Laws 1907-08, page 490, and as in the Revised Laws of the State of Oklahoma, 1910, Ch. 69, Art. 3, page 1938 (effective May 16, 1913), and as amended in the Statutes of the State passed and approved the 3rd day of March, 1917, appearing Sess. Laws 1917, Ch. 253, at page 462 (Senate Bill No. 181), are not in conflict with the provisions of Act of Congress of June 16, 1906 (Enabling Act of Oklahoma), 30 Stat. L. 507, and with the Constitution of the United States, Section 10, Article 1, and Amendment XIV thereto, for that the State of Oklahoma by and through the provisions of said Statute, assumes and seeks to deprive the defendants in error, citizens of the United States and of the State of Oklahoma, of property and of title, and of rights, privileges and immunities secured to citizens of the United States, and of said state,

by the Constitution of the United States, and the Act of Congress of June 16, 1906, and Statute of Oklahoma, Sess. L. 1909, Ch. 28, Art. II; and to deprive the defendants in error, and other citizens of the United States of liberty and property without due process of law; and to deprive and deny the defendants in error and certain citizens and persons within the jurisdiction of the State of Oklahoma of the equal protection of the law; and to impair the contract of lessees, Price and Price.

II.

The Court erred in holding that by the provisions of said Statutes of the State of Oklahoma, Sess. L. of 1907-08, and Sess. L. 1917, these defendants in error are not deprived of property, title, rights, privileges, and immunities, secured to them and other citizens of the United States, and of the State of Oklahoma, by the Federal Constitution, and the laws of the United States, to wit, the Act of June 16, 1906 (Enabling Act of the State of Oklahoma).

III.

The Court erred in holding that by the provisions of said acts of the Legislature of the State of Oklahoma, cited in Assignment II, *supra*, the defendants in error are not deprived of liberty and property without due process of law.

IV.

The Court erred in holding that the said Statute cited in Assignment II, *supra*, and the authority exercised thereunder, and thereby authorized to be exercised thereunder, are within the power of the Legislature of the State of Oklahoma, and not in contravention of the Constitution of the United States, and the Fifth and Fourteenth Amendments thereto, and the Act of Congress of June 16, 1906 (Enabling Act).

V.

The Court erred in holding that the provisions of said Statutes of the State of Oklahoma cited in Assignment II, *supra*, and the authority exercised thereunder and thereby authorized to be exercised thereunder do not unlawfully discriminate between the defendants in error and others similarly situated within the State of Oklahoma.

VI.

The Court erred in holding that the said Statutes of the State of Oklahoma cited in Assignment II, *supra*, do not grant or permit special and exclusive privileges to certain citizens of the State of Oklahoma which they deny to defendants in error, and other citizens of the State similarly situated, and do not permit same to be done, contrary to the Constitution and laws of the United States.

VII.

The Court erred in holding, and in entering the judgment in said cause perpetually enjoining the defendants in error from interfering with the operation of the Magnolia Petroleum Company on the land involved under the mineral lease or grant complained of by defendants in error, and in decreeing the royalties of oil and gas produced under said lease to the State of Oklahoma; and in limiting the recovery of the defendants in error, "To such damages as they may have sustained to their agricultural lease by reason of the operation of said oil and gas lease," for and because by so doing it deprived defendants in error of property without due process of law; and abridged rights of the defendants in error and impaired the contract between the United States and the State of Oklahoma, and of defendants in error in violation of Act of June 16, 1906, and the Constitution of the United States, Art. 1, Section 10, and Amendment XIV.

VIII.

The Court erred in holding and deciding that the defendants in error, William T. Price and Ora Price, had not the preference right to buy said land, in its entirety, under the grant of such right in and to said land so conditioned by the Act of Congress of June 16, 1906 (Enabling Act), and accepted by Constitution of Oklahoma, Article XI, Section 1, and Statute of Oklahoma, Sess. L. 1909, Ch. 28, Art. II, all accepted and asserted by defendants in error, Price.

IX.

The Court erred in holding and deciding that the defendants below, William T. Price and Ora Price, defendants in error, had not the preference right to buy said land, and all thereof, under the contract between the State of Oklahon.

and these lessees expressed in the Constitution of Oklahoma, Article XI, and the Statute of Oklahoma, Session Laws 1909, page 448, being Chap. 28, Art. II, accepted and asserted by defendants as lessees of said land and especially set up and claimed under the Constitution and Laws of the United States.

X.

The Court erred in holding and deciding that as to defendants in error, William T. Price and Ora Price, the Statute of Oklahoma of 1907-08, page 490, Chap. 49, Art. IV, Revised Laws 1910, page 1938, Chap. 69, Art. III, and the Statute of Oklahoma, Session Laws 1917, Chap. 253, page 462, did not impair, contrary to Article I, Section 10, of the Constitution of the United States and the Fourteenth Amendment to said Constitution, the contract between the United States and the lessee, Price, and between the State of Oklahoma and the lessee, Price, expressed in the Act of June 16, 1906, and Oklahoma Constitution, Art. XI, Section 1, and in the Statutes of Oklahoma, Sess. Laws 1909, Chap. 28, Article II, page 448, accepted by Price as lessee.

XI.

The Court erred in holding that the Statutes of Oklahoma cited in Assignment II, *supra*, as construed and applied in this case, to these defendants in error, did not take their liberty and property, and abridge their privileges as citizens of the United States, without due process of law, and in violation of the Constitution of the United States, Amendments V and XIV, and in holding that such legislation as construed and applied to these defendants in error does not take their liberty and property without compensation, and in violation of the Constitution of the United States and Amendments V and XIV thereto.

XII.

That the Court erred in holding and deciding "that the only rights they (defendants in error) had * * * were no more than the preference right to re-lease said land for agricultural purposes." Because, and for the reason, that such holding constitutes a deprivation of defendants' property, and an impairment of defendants' contract with the United States, and

the State, and a denial of equal protection of the law to defendants in error, and the taking of property and liberty of defendants in error, without due process of law, in contravention of the Constitution of the United States, and Amendments thereto.

XIII.

The Court erred in holding that the Commissioners of the Land Office of Oklahoma "duly segregated such land in question from sale because of the oil and gas *supposed* to exist therein" for the reason that such construction and application of the law impairs the contract of defendants in error, and deprives them of their property arbitrarily and without due process of law, and without compensation; for that by the law the defendants held preference right to buy said land and all of it, under and by virtue of the Act of Congress of June 16, 1906, and Constitution of Oklahoma, Art. XI, and the Statute of the State of Oklahoma of March 2, 1900, Sess. L., Ch. 28, Art. II, page 448, and held the preference right to lease and re-lease said land, and to the possession thereof and all of it, pending purchase, and for the reason and because the State of Oklahoma, by its legislation of March 2, 1909, had sold, or ordered sold said land on the terms in legislation expressed, and had caused the same to be appraised long prior to the purported Act of segregation; and the defendants, Price, had done and offered to do all things imposed upon them to do under the law, as found by the trial court to acquire the legal title thereto, and had acquired the equitable title as adjudged by the trial court, and such holding of the court and application to these defendants constituted an impairment of defendants' contract; and deprivation of defendants' liberty and property; and a denial to defendants of equal protection of the law; all in contravention of the Constitution of the United States and Amendments thereto.

XIV.

The Court erred in holding and deciding that the Commissioners "duly segregated such land in question from sale because of the oil and gas *supposed* to exist therein" for the reason and because the Statute of Oklahoma, Sess. Laws 1907-08, Chap. 49, Art. IV, page 490, and Statute of March 30, 1917, Sess. L. 1917, Chap. 253, page 462, or other law, did

these defendants in error, is to impair their contract right in and to said land, and to take their property without due process of law, and to deny them the equal protection of the law; all contrary to the Constitution of the United States and the Amendments thereto, and the Act of Congress of June 16, 1906 (Enabling Act of Oklahoma), and such construction makes said Statutes of 1907-08 and 1917 invalid.

XVI.

The Court erred in holding: "But the State has not sold it and the lessee has not purchased it and until the land is sold and purchased by the lessee and fee simple title conveyed to the lessee, such lessee has no right to the oil and gas and other minerals therein," for the reason that by such decision, construction and application of the State Statutes, the contract of defendants in error, relating to said land is impaired, and their liberty and property is taken without due process of law, and they are denied the equal protection of the law for the reason and because:

(a) By Act of Congress of June 16, 1906 (Enabling Act), and by Sess. L. of Oklahoma 1909, p. 448, Ch. 69, Art. 1, Rev. L. 1910, the lessees were granted a preference right to purchase the land, and all of it, and its content and possession and such grant was accepted by the lessees, defendants in error, and is property and is protected by the Constitution of the United States, Article I, Section 10, and the Fourteenth Amendment; and

(b) Because the State of Oklahoma, by Act of March 2, 1909, page 448, Chap. 26, Art. II, sold, or ordered sold, said land to the lessee thereof; and granted preference rights in and to said land, and all of it, and all its content and possession under the terms in said Statute expressed; and the said grant by the said Legislature was by the said lessee accepted and he performed all on him imposed, and demanded conveyance; and, said decision by its construction and application of the law relating to said land impairs the contract between the lessees (defendants in error) and the United States of America, and the State of Oklahoma, in contravention of the Constitution of the United States and the Amendments thereto, and deprives the lessees of their liberty and property and privileges and immunities under the law, in contravention

not confer plenary power, or authorize segregation of said land on "supposition," and did not authorize the arbitrary and whimsical discrimination practiced against defendants in error; and because the said statutes of Oklahoma did not provide for a hearing to determine whether or not the lands of defendants in error was mineral land or "supposed" to contain mineral within the contemplation of said Statute; and because no notice of hearing on "segregation" of said land was had; and because the law did not authorize the Commissioners of the Land Office of the State of Oklahoma to withhold the land of defendants in error from those ordered sold, or sold by the State by Statute of March 2, 1909, Sess. Laws 1909, p. 448, Chap. 28, Art. II (R. L. 1910, Ch. 69, Art. III), and the said holding and decision is applied to these defendants impaired the contract of defendants in error and deprived them of their liberty and property without due process of law, and without compensation, and denied to defendants in error the equal protection of the law, contrary to the Constitution of the United States and the Amendments thereto, and makes said Statutes of 1907-08 and 1917 invalid.

XV.

The Court erred in holding "the Commissioners of the Land Office could not have acted in good faith to the trust imposed in them by the Constitution and by the Statute, if they had advertised this land *believing* that it contains oil and gas products which would pay a hundredfold more to the State than the sale of land would pay," and by such decision, ruling and construction of the law as applied to these defendants in error, the rights of the defendants in error under the Constitution of the United States, and Act of Congress of June 16, 1906, is impaired, and their liberty and property taken without due process of law, contrary to the Constitution of the United States and the Amendments thereto, because and for the reason:

(a) That the Commissioners of the Land Office of the State of Oklahoma had no *trust* imposed in them by the Act of Congress of June 16, 1906 (Enabling Act), insofar as this land and these defendants in error were concerned.

(b) Their power was not made to depend upon their "believing" something and to so construe and apply the law to

of the Constitution of the United States and Amendments thereto.

XVII

The Court erred in holding that the "contract" of the lessee of said lands, defendants in error, relating to said land and between said lessee and the United States of America, and the State of Oklahoma was, or could be, other than the state of the law governing said lands and applying to said lessee, common with all others similarly situated in said State, and as expressed in the Constitution of the United States and the Act of Congress of June 16, 1906 (Enabling Act), and the Constitution of the State of Oklahoma, accepting the conditions thereof and the legislation of the State of Oklahoma of March 2, 1909, aforesaid; and by such decision, judgment and order, and its application to said lands, and to defendants in error, the Court impaired the contract existing between defendants in error and the State and the United States in relation to said land, and deprived defendants of their liberty and property without due process of law, and without compensation, and denied to defendants the equal protection of the law in contravention of and repugnant to the Constitution of the United States, Section 10, Article I, and Amendment XIV to the said Constitution.

XVIII.

The Court erred in holding that the Statute of Oklahoma, Sess. Laws 1907-08, page 490 (Rev. Laws of Oklahoma of 1910, Chap. 69, Article III, p. 1938, and as amended March 30, 1917, Sess. Laws 1917, Chap. 253, page 462), was not in violation of and repugnant to the Constitution of the United States, Article I, Section 10, and the Fourteenth Amendment thereto, and did not impair the obligation of contract between the defendants below and the State of Oklahoma, and the United States of America, constituted by the Constitution of the United States and the Act of Congress of June 16, 1906 (Enabling Act), and the Constitution of the State of Oklahoma, Article XI; and the Acts of Oklahoma, Session Laws 1909, age 448 (Rev. Laws 1910, Chap. 69, Art. I, Sec. 1, *et seq.*, page 1923), accepted and acted upon by the defendants below, defendants in error here; and in holding that the said Statute of 1907-08 did not take defendants' property without due

process of law, and did not deprive defendants of liberty and property without due process of law, and contrary to the Constitution of the United States and the Fourteenth Amendment thereto.

XIX.

The Court erred in holding, deciding, decreeing and ordering that the defendants in error do not have and hold an equitable title, defensible in law, in and to the said land and did not own and hold an estate in fee therein by virtue of the status in law of said land, and said lessees thereof, and under the Act of Congress of June 16, 1906, and the Rules and Regulations referred to and incorporated therein, and the legislation of the State of Oklahoma thereunder and pursuant thereto, and in not holding that the said estate was equivalent to and amounted to an estate in fee in said land without reversion, and subject only to the change in rate of annual payment by the lessee thereof; and the Court by such decision, judgment and decree, and by the application thereof to these Defendants in Error, impaired the obligation of the contract of Defendants in Error, relating to said lands as expressed in the law aforesaid; and deprived Defendants in Error of liberty and property without due process of law and denied Defendants in Error the equal protection of the law, contrary to the Constitution of the United States and the Fourteenth Amendment thereto.

XX.

That said Statutes of Oklahoma, Sess. L. 1907-08, p. 490, and 1917, p. 462, Ch. 253, and the interpretation placed upon the legislation of the State of Oklahoma aforesaid, and the action of the Commissioners of the Land Office of the State of Oklahoma aforesaid, violates the trust reposed in the State by the Act of June 16, 1906, and diverts the said lands involved herein from the uses and purposes designated by Congress in the said Enabling Act and denies to the Defendants in Error (lessees of said land), their property and rights under the said Act of Congress of June 16, 1906, and is therefore void; because repugnant to the Constitution of the United States and Amendments thereto.

XXI.

The Court erred in rendering and entering the judgment, order and decree herein rendered and entered.

XXII.

The Court erred in denying Defendants in Error rehearing applied for, and in overruling Defendants' in Error motion and application for re-hearing.

XXIII.

The Court erred in holding that the State of Oklahoma, or its Commissioners of the Land Office of Oklahoma, could, or did, regain the estate granted to the lessee by preventing him from performing the conditions subsequent fixed by the law of grant.

Wherefore, these defendants, William T. Price and Ora Price, Defendants in Error in the Supreme Court of the State of Oklahoma, and Petitioners in Error in Writ of Error to the Supreme Court of the United States, pray that a Writ of Error from the Supreme Court of the United States may issue to the Supreme Court of the State of Oklahoma, and further pray that the Supreme Court of the United States will reverse the final order and judgment of the Supreme Court of the State of Oklahoma, and that the defendants, William T. Price and Ora Price, may be restored to all things which they have lost by occasion of said final order and judgment of the Supreme Court of the State of Oklahoma, and that they may have such further and other relief as may be proper and just; for all of which they invoke the protection of the Act of Congress of June 16, 1906, and the acceptance thereof in the Constitution of Oklahoma, and invoke the protection of the Constitution and Laws of the United States and Amendments thereto.

Respectfully submitted,

BLAKE & BOYS,
STUART, SHARP & CRUCE,
W. C. STEVENS,

Attorneys for Defendants in Error.

In the Supreme Court of the State of Oklahoma.

Certificate of Clerk.

I, William M. Franklin, Clerk of the Supreme Court of the State of Oklahoma, do hereby certify that the foregoing pages, numbered from 1 to 214, is a full, true and complete copy of the petition in error, petition for injunction, amended petition, answer to amended petition, application of State to intervene, petition of intervention, answer to petition of intervention, reply of plaintiff to defendant's answer, reply of intervener to defendant's answer to petition in intervention, recital as to appearances and application and leave of court to file pleadings of the respective parties, the evidence in the case consisting of the stipulation of facts offered in evidence by each party, the rulings of the court thereon, excluding the duplication of exhibits, oral and record evidence, excluding the duplication of exhibits offered, journal entry of judgment, motion for new trial and journal entry overruling same, and journal entry extending the time for making and serving case-made, all the proceedings in the Supreme Court, except the orders concerning the drilling of wells during litigation and the custody of the property pending litigation, and assignment of errors filed, in case number 12,243, Magnolia Petroleum Company, a joint stock association, John Sealy, E. R. Brown, R. Waverly Smith, E. E. Plumly, and W. C. Proctor, Trustees, State of Oklahoma, ex rel. Commissioners of the Land Office of the State of Oklahoma, and ex rel. S. P. Freeling, Attorney General of the State of Oklahoma, Plaintiff's in Error, versus William T. Price and Ora Price, Defendants in Error, as the same remain of record and on file in my office.

In witness whereof, I hereto set my hand and affix the seal of said Supreme Court, at Oklahoma City, Oklahoma, this 22 day of August, 1922.

Wm M. Franklin

Clerk Supreme Court, Oklahoma.

(Seal)

By Jessie Pardoe

Deputy

Endorsed on cover: File No. 29,096. Oklahoma Supreme Court. Term No. 546. William T. Price and Ora Price, plaintiffs in error, vs. Magnolia Petroleum Company et al. Filed August 15th, 1922. File No. 29,096.

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